
1 **5.0 Services, Tolls and Tariff**

2 **5.1 Introduction**

3 This section provides an overview of the proposed services offered to Cushing by Keystone, the
4 methodology employed in deriving both the committed and uncommitted service tolls, the terms
5 upon which committed and uncommitted shippers will be provided access to the system, and
6 justification for the toll approvals requested.

7 Capitalized terms not defined herein are defined in the Transportation Service Agreements or the
8 Tariff, which are attached as Appendix 5-1 and 5-2, respectively.

9 **5.2 Development of the Cushing Expansion**

10 During 2006 Keystone had discussions with shippers regarding an expansion of the Keystone
11 Pipeline to serve the refining market in southern PADD II and the northern PADD III market
12 served by the hub at Cushing, Oklahoma.

13 On January 30, 2007, Keystone announced an open season process to acquire binding
14 commitments to support an expansion of 24 800 cubic metres (156,000 barrels) per day to a
15 nominal capacity of 94 000 cubic metres (591,000 barrels) per day from an initial nominal
16 capacity of 69 200 cubic metres (435,000 barrels) per day, and the construction of an additional
17 473 kilometres of the U.S. portion of Keystone Pipeline from the Nebraska/Kansas border to the
18 refining and terminal hub near Cushing. The open season process was conducted between
19 January 30, 2007 and March 14, 2007. An open house was held February 5, 2007 which was
20 attended by representatives of 21 companies. Keystone also separately met and discussed the
21 Cushing Expansion with 40 potential shippers. Confidentiality agreements were executed with
22 18 new potential shippers (in addition to the pre-existing confidentiality agreements with 22
23 companies for the Keystone Pipeline which also covered Cushing Expansion information).

1 On July 3, 2007, Keystone announced it had secured 24 600 cubic metres (155,000 barrels) per
2 day of new firm contracts from Hardisty, Alberta to Cushing, Oklahoma with an average
3 duration of 16 years.

4 The parties executing Petroleum Transportation Services Agreements (“TSAs”) are significant
5 Western Canada producers and downstream refiners with experience in crude oil marketing and
6 transportation. Keystone understands that, to date, none of the Cushing Expansion Term
7 Shippers have publicly disclosed their status as a Cushing shipper for the reason that disclosure
8 could reasonably be expected to prejudice their competitive positions.

9 **5.3 Project Attributes**

10 The Cushing Expansion provides significant incremental access to markets in Cushing, and does
11 so on competitive economic terms relative to other systems. It also provides a more direct access
12 without having to use break-out tanks during transfer between pipelines which can increase the
13 degradation of petroleum quality that occurs during transport.

14 The negotiated tolls pursuant to the TSAs were designed to provide long-term price certainty.
15 The Fixed Toll portion will not escalate throughout its term, and contract terms of 10, 15 or 20
16 years were offered.

17 Keystone proposes to charge tolls for two types of services for the Cushing Expansion shippers:
18 service which is supported by a TSA (“Committed Service”), and service which is not supported
19 by a TSA (“Uncommitted Service”). The methodology underpinning the negotiated tolls and
20 terms of access for Committed Service is described in Section 5.4 and that for Uncommitted
21 Service is described in Sections 5.5 and 5.6.

22 **5.4 Committed Service**

23 The major features of Committed Service are:

- 24 a) Unapportioned access up to the volume in the TSA.

1 b) A two-part toll comprised of a fixed component, the Fixed Toll, and a variable
2 component, the Variable Toll:

- 3 (i) The Fixed Toll will not change over the term of the TSA, and is designed to recover
4 capital-related costs. The Cushing Expansion Open Season offered 10, 15 and 20
5 year contracts, in which the fixed component of the toll decreased as the length of
6 term increased. The toll differentiation between terms was structured to recognize
7 the additional financial commitment provided by longer-term contracts. Cushing
8 Expansion Term Shippers are committed to pay the Fixed Toll in respect of their
9 Contract Volumes whether or not crude oil is shipped.

10 The Fixed Toll in the TSA is subject to adjustment in two stages based upon
11 changes in capital costs. The toll adjustment mechanism for the Cushing Expansion
12 Term Shippers is:

- 13 1) The capital costs will be re-estimated by Keystone not later than two
14 months following receipt of Canadian and U.S. Regulatory Approvals required for
15 Keystone Pipeline and the Cushing Expansion Facilities. The Fixed Toll will
16 increase or decrease by the same percentage change as the percentage change
17 between the Re-estimated Project Costs and the Initial Estimated Project Costs. The
18 toll that will be filed with the Board prior to in-service of the Cushing Expansion
19 and applicable to the Cushing Expansion will reflect the re-estimated capital costs.
- 20 2) A second adjustment may be made to the Fixed Toll not more than two
21 years following the in-service date of the Cushing Expansion. Keystone will make a
22 determination of Final Project Costs at that time, and the Fixed Toll will increase or
23 decrease at a percentage rate equal to one-half of the percentage change between the
24 Final Project Costs and the Re-estimated Project Costs. Keystone will bear the
25 impact of the remaining 50% of the change, thereby assuming a portion of
26 construction cost risks in order to offer additional toll certainty and to align with
27 shippers in a desire to minimize construction costs.

1 (ii) The Variable Toll will reflect an allocation of total estimated operating,
2 maintenance and administrative expenses (“OM&A”) each month to volumes
3 shipped. The Variable Toll for light crude is 70% of that for heavy crude
4 transported the same distance. The Variable Toll will change over time depending
5 on actual OM&A and throughput volumes, and is intended to provide Keystone
6 with a flow-through recovery of actual operating costs for the actual volumes
7 shipped.

8 The Variable Toll will be estimated by Keystone prior to commissioning of the
9 Cushing Expansion facilities in the first year of operation and by December 1 of
10 each subsequent year. The forecast Variable Toll will have regard to a number of
11 factors, including the types of crude oil forecast to be transported, inflation rates
12 and prior period rates. The forecast variable costs for each month will then be
13 allocated on a provisional or interim basis over the forecast throughput for the
14 succeeding year. After December 31 of each year, Keystone will determine the
15 actual OM&A and volumes shipped and calculate a final Variable Toll. Any
16 variance between the provisional Variable Toll and the final Variable Toll will be
17 recovered from or paid to the Cushing Expansion Term Shippers in the next
18 succeeding year in twelve equal instalments. As part of the negotiated TSA,
19 Cushing Expansion Term Shippers will have audit rights in respect of the Variable
20 Toll calculation.

21 Keystone has agreed to seek to negotiate an OM&A incentive arrangement after the
22 third anniversary of the commencement of Cushing deliveries.

23 Tables 5.1 and 5.2 below show the tolls in Canada for the Cushing Expansion calculated based
24 upon Keystone’s current estimate of the capital costs of Cdn \$1,664 million and the full path
25 tolls from Hardisty to Cushing based upon capital costs in Canada of Cdn \$1,664 million and US
26 \$3,556 million in the U.S. These tolls are illustrative estimates only, based upon current cost
27 estimates and are not formal Re-estimated Project Costs as defined in the TSAs. Actual tolls filed

- 1 will be calculated as described above and filed with the Board prior to commencement of
2 service.

**Table 5.1 – Illustrative Committed Tolls (for Cushing)
From Hardisty to the International Border
Based on current estimate of capital costs of \$1,664 million
[\$Cdn]**

Line	Term of Contract: Units:	10 Years		15 Years		20 Years	
		<u>\$/m³</u>	<u>\$/bbl</u>	<u>\$/m³</u>	<u>\$/bbl</u>	<u>\$/m³</u>	<u>\$/bbl</u>
1	Fixed Toll	7.041	1.120	6.943	1.104	6.794	1.080
2	Variable Toll - Light	<u>1.761</u>	<u>0.280</u>	<u>1.761</u>	<u>0.280</u>	<u>1.761</u>	<u>0.280</u>
3	Total – Light (1+2)	8.802	1.400	8.704	1.384	8.555	1.360
4	Variable Toll – Heavy	<u>2.515</u>	<u>0.400</u>	<u>2.515</u>	<u>0.400</u>	<u>2.515</u>	<u>0.400</u>
5	Total – Heavy (1+4)	9.556	1.520	9.458	1.504	9.309	1.480

- 3 Variable toll is based on throughput of 94.0 10³m³/d (591,000 bbl/d).

**Table 5.2 – Illustrative Committed Aggregate Tolls/Rates from Hardisty to Cushing
Based on current estimate of capital costs of Cdn \$1,664 million and US \$3,556 million
[\$US/bbl]**

Line		Term		
		<u>10 years</u>	<u>15 years</u>	<u>20 years</u>
1	Fixed Toll/Rate	3.650	3.477	3.331
2	Variable Toll/Rate - Light	<u>0.919</u>	<u>0.919</u>	<u>0.919</u>
3	Total Light Toll (1+2)	4.569	4.396	4.250
4	Variable Toll/Rate - Heavy	<u>1.313</u>	<u>1.313</u>	<u>1.313</u>
5	Total Heavy Toll (1+4)	4.963	4.790	4.644

- 4 (1) Exchange rate of US\$1.00 = Cdn\$1.00.
5 (2) Variable toll is based on throughput of 591,000 bbl/d.

- 6 The Cushing Expansion tolls resulted from an open season process. Shippers that have entered
7 into the negotiated TSAs are sophisticated participants in the crude oil industry, and would not
8 have undertaken to pay tolls on the Keystone Pipeline absent a belief that the committed tolls
9 were just and reasonable.

1 **5.5 Uncommitted Service**

2 Capacity available in excess of that contracted by term shippers in aggregate (“Uncommitted
3 Capacity”) will be made available by Keystone on a monthly basis. Keystone has presently
4 78 700 cubic metres (495,000 barrels) per day of Committed Capacity and 15 300 cubic metres
5 (96,000 barrels) per day of capacity available for Uncommitted Capacity or new term contracts.
6 The Uncommitted Capacity will be available to provide transportation service on a monthly basis
7 for both non-term shippers and for term shippers to the extent they wish to transport crude oil in
8 excess of the contract volume supported by a TSA.

9 Keystone will reserve 5 600 cubic metres (35,000 barrels) per day of the nominal capacity of
10 Keystone Pipeline to be available and offered as Uncommitted Capacity. This is an increase of
11 1 600 cubic metres (10,000 barrels) per day from the 4 000 cubic metres (25,000 barrels) per day
12 that was approved in the OH-1-2007 Reasons for Decision and maintaining the same percentage
13 of the total capacity of 94 000 cubic metres (591,000 barrels) per day being reserved as
14 Uncommitted Capacity. Keystone may offer, in future open seasons, contracts for firm service
15 for any differences between the total Committed Capacity and the capacity reserved for
16 uncommitted shippers.

17 **5.6 Uncommitted Service Tolls**

18 Keystone proposes to charge a maximum Uncommitted Toll for shippers with a Cushing
19 delivery point that is 120 % of Keystone’s combined Fixed Toll and Variable Toll (the
20 “Committed Toll”) applicable to ten year contracts for Cushing Expansion Term Shippers. The
21 ten year toll is the shortest-term Committed Toll offered for a Cushing delivery point. This is
22 consistent with the Uncommitted Toll design approved by the Board in the OH-1-2007 Reasons
23 for Decision where the Uncommitted Toll for shippers with a Patoka delivery point was 120% of
24 the Committed Toll to Patoka with the shortest term, which was five years. In the Cushing
25 Expansion Open Season a five year term contract was not offered.

26 The illustrative Uncommitted Toll (Cushing) and ten-year Committed Toll (Cushing) is shown in
27 Table 5.3.

**Table 5.3 – Illustrative Uncommitted Tolls (Cushing) from Hardisty to the Canada/U.S. Border and Ten Year Committed Toll (Cushing)
Based on current estimate of project costs**

Units (\$Cdn):	Uncommitted		Ten Year Committed	
	\$/m ³	\$/bbl	\$/m ³	\$/bbl
Light Crude	\$10.561	\$1.679	\$8.801	\$1.400
Heavy Crude	\$11.467	\$1.823	\$9.556	\$1.519

1 The Uncommitted Toll methodology and, in particular, the premium to the total ten-year
2 Committed Toll (Cushing) recognizes the substantially different circumstances of the shippers
3 that have made financial commitments to the Cushing Expansion and those that have not.

4 The circumstances and conditions of Uncommitted Shippers are not substantially similar to the
5 circumstances and conditions of Term Shippers, with a result that the Uncommitted Toll is just,
6 reasonable and non-discriminatory. The Term Shippers have made significant financial
7 commitments and have provided demonstrable market support for the project. Those financial
8 commitments are real costs to Term Shippers, and it would not be just or reasonable for shippers
9 who have not made similar commitments to receive the same toll treatment. Failure to recognize
10 the economic cost to shippers of providing support in the form of TSAs would discourage
11 agreements in the future, and would be expected to result in reduced facilities construction and
12 consequent reduced market access for all shippers. Shippers that have entered into the negotiated
13 TSA are sophisticated participants in the crude oil industry, and would not have undertaken to
14 pay tolls on the Keystone Pipeline in the long term absent a belief that the Committed Tolls were
15 just and reasonable, and in the expectation that those not making long-term commitments would
16 not receive the benefits of the same toll treatment.

17 The Uncommitted Toll will be adjusted to maintain a maximum 20% premium over the ten-year
18 Committed Toll, including any adjustments to the ten-year toll as described in Section 5.4.

19 Keystone contemplates that it may at times offer Uncommitted Capacity at a toll less than the
20 Uncommitted Toll should market circumstances so warrant. In the event, Keystone will make the

1 appropriate filing with the Board to reduce the level of the toll or to seek approval for a
2 mechanism which allows for toll discounting.

3 **5.7 TSA and Tariff**

4 A *pro-forma* TSA is provided in Appendix 5-1. The terms and conditions of this TSA are
5 identical to TSAs signed by each of the Cushing Expansion Term Shippers, and the executed
6 TSAs differ only in respect of the contracting entity, and the term and volume contracted by each
7 shipper. The form of Tariff was previously filed with the NEB by Keystone in OH-1-2007 and
8 no changes were made for this Application. A copy of the *pro-forma* Tariff is provided in
9 Appendix 5-2. Keystone will amend the Tariff prior to commencement of operations to comply
10 with the Board's direction in its OH-1-2007 Reasons for Decision to include the terms and
11 conditions of access to contracted transportation capacity on the Keystone Pipeline.

APPENDIX 5-1

PETROLEUM TRANSPORTATION SERVICE AGREEMENT

**KEYSTONE CANADA PIPELINE SYSTEM EXPANSION
PETROLEUM TRANSPORTATION SERVICE AGREEMENT**

THIS CONTRACT made as of the ____ day of _____, 2007.

PARTIES:

TRANSCANADA KEYSTONE PIPELINE GP LTD.,
a corporation existing under the laws of Canada, as general partner on behalf of
TRANSCANADA KEYSTONE PIPELINE LIMITED PARTNERSHIP,
a limited partnership registered under the laws of Alberta
("**Carrier**");

AND

_____,
a company incorporated under the laws of _____
("**Shipper**")

WHEREAS:

- A. Carrier is proposing to construct, own and operate the Keystone Initial Facilities;
- B. Carrier is proposing to construct, own and operate an expansion of the capacity of the Keystone Initial Facilities;
- C. Subject to the satisfaction or waiver of the conditions precedent set forth in Article 3, Shipper has requested and Carrier has agreed to transport the Contract Volume of Petroleum Tendered by Shipper or Shipper's agent pursuant to the terms and conditions of this Petroleum Transportation Service Agreement ("**Contract**"), and subject to the Tariff;
- D. Shipper wishes to make a firm commitment to Carrier regarding the transportation of Petroleum on the Pipeline System; and
- E. In recognition of the support provided by Shipper for the capacity increase of the Pipeline System, Carrier is prepared to offer tolls and terms of service to Shipper subject to and in accordance with the provisions of this Contract and Carrier's Tariff.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth below, Carrier and Shipper agree as follows:

ARTICLE 1
INTERPRETATION

- 1.1 Except as specifically provided in this Contract, the capitalized terms and phrases used but not defined in this Contract shall have the meaning ascribed to such terms and

phrases in the Rules and Regulations. In addition, whenever used in this Contract, the following words and terms have the meanings set out below.

“Advance Notice” has the meaning given that term in Section 5.1.

“Commencement Date” has the meaning given that term in Section 5.3.

“Development Costs” means all actual documented project development costs in respect of the Expansion Facilities incurred or committed to by or on behalf of Carrier to third parties (whether before or after the date of this Contract, as may be adjusted pursuant to Section 4.6) up to and including the Termination Date, including: right of way, environmental, regulatory, legal, engineering and design, marketing and project development, project management, external relations and consultations, financing, materials, materials procurement (including any related cancellation charges, as applicable), construction, consulting and other costs and expenses of a similar nature, to a maximum of ten million United States dollars (U.S.\$10,000,000), aggregated between Carrier and Keystone US, and allocated between Carrier and Keystone US in a reasonable manner, having regard to the pipeline system to which such costs apply.

“Development Costs Financial Assurances” has the meaning given that term in Section 4.5.

“Expansion Contract” means a contract between Carrier and a Term Shipper, on terms and conditions corresponding to this Contract.

“Expansion Facilities” means that portion of the Pipeline System other than the Keystone Initial Facilities, consisting of the Petroleum receipt, delivery, pipeline, pumping, monitoring, control and ancillary facilities required to expand the Pipeline System to a nominal transportation capacity of approximately 590,000 barrels per day of Petroleum.

“Facility” has the meaning given that term in Section 7.1.

“Fixed Toll” means the “Fixed Toll” described in Part B of Appendix ‘B’.

“Keystone Initial Facilities” means that portion of the Pipeline System consisting of Petroleum receipt, delivery, pipeline, pumping, monitoring, control and ancillary facilities commencing at or near Hardisty, Alberta, and terminating at the International Boundary at or near Haskett, Manitoba with a nominal transportation capacity of approximately 435,000 barrels per day of Petroleum.

“Operating, Maintenance and Administration Costs” has the meaning given in paragraph D.2 of Appendix ‘B’.

“Proportionate Share” means, at any time, the proportion that Shipper’s Contract Volume represents in proportion to the aggregate of all Contract Volumes set forth in all Expansion Contracts executed by all Term Shippers and Carrier (including this Contract), and which have not been terminated prior to the Termination Date.

“Regulatory Approvals” has the meaning given that term in Section 2.1.

“Rules and Regulations” means the Rules and Regulations Governing the Transportation of Petroleum contained in the Tariff in effect at that time.

“Shipper Information” means all of the information and evidence to be provided by Shipper to Carrier pursuant to Sections 2.3 (a) and (b).

“Term” has the meaning given that term in Section 9.1.

“Termination Date” means the relevant termination date set forth in Section 4.4.

“U.S. Expansion/Extension TSA” has the meaning given that term in Section 3.1(d).

“Variable Toll” means the “Variable Toll” described in Part D of Appendix ‘B’.

1.2 Attached to and forming an integral part of this Contract are the following appendices:

- a) Appendix ‘A’, comprising the Contract Term and Contract Volume;
- b) Appendix ‘B’, comprising the negotiated tolls and tolling principles (Fixed Toll and Variable Tolls) for Petroleum transportation service from Hardisty, Alberta to the International Boundary;
- c) Appendix ‘C’, comprising a draft of the Rules and Regulations.

1.3 In this Contract:

- a) The headings used are inserted for convenience of reference only and are not to be considered or taken into account in constructing the terms or provisions thereof nor to be deemed in any way to qualify, modify or explain the effect of any such provisions or terms.
- b) Where the word “including” or “includes” is used, it means “including (or includes) without limitation”.
- c) A reference to a statute includes all regulations made pursuant to such statute and, unless otherwise specified, the provisions of any statute or regulation which amends, supplements or supersedes any such statute or any such regulation.
- d) Time is of the essence in the performance of the Parties’ respective obligations.
- e) If, in any jurisdiction, any provision of this Contract or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Contract and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other Parties or circumstances.

ARTICLE 2
REGULATORY APPROVALS

- 2.1 Subject to the terms and conditions of this Contract, including such level of satisfaction of the conditions precedent in Sections 3.1 (c), (d) and (e) for the purposes outlined in this Section 2.1, as may be determined by each of Carrier and Keystone US in its sole discretion, Carrier, in conjunction with Keystone US, shall proceed with due diligence and in good faith to seek to obtain from all governmental, administrative and regulatory (including aboriginal and tribal, if applicable) authorities having jurisdiction in Canada and the United States such authorizations or exemptions, or both, and any necessary amendments or supplements thereto, that each of Carrier and Keystone US, in its sole discretion, determines are necessary for, and on terms satisfactory to, Carrier to construct, acquire, own and operate the Pipeline System (including the Expansion Facilities) and to provide transportation service for Shipper as contemplated in the Tariff and for Keystone US to construct, acquire, own and operate the Keystone US Pipeline System (including the “Expansion/Extension Facilities” pursuant to the US Expansion/Extension TSA) as contemplated in the contractual arrangements entered into between Keystone US and its shippers, except for those that are, in the opinion of each of Carrier and Keystone US, not material or not customarily required by prudent pipeline operators prior to the commencement of on-site construction or pre-construction activities (collectively, the “**Regulatory Approvals**”).
- 2.2 Shipper acknowledges and agrees that Carrier and Keystone US have exclusive control over the Regulatory Approvals filing and prosecution process. Neither Carrier nor Keystone US shall be obligated to appeal any decision of a regulatory, administrative, governmental or judicial authority that has the effect of (a) denying a Regulatory Approval, or (b) granting a Regulatory Approval on conditions that are determined by each of Carrier and Keystone US in its sole discretion, to be unsatisfactory to Carrier or Keystone US, as the case may be.
- 2.3 Shipper agrees to cooperate with Carrier to obtain the Regulatory Approvals and provide such commercially reasonable support as may be necessary in connection with the applications for, and the processing of, the Regulatory Approvals. Such support and cooperation may, at Carrier’s reasonable request, include:
- a) providing any information reasonably requested by Carrier or Keystone US for use in applying for a Regulatory Approval and any information required by a regulatory, administrative, governmental or judicial authority in connection with its review of an application for a Regulatory Approval, including the provision of witnesses to speak to such information; and
 - b) providing to Carrier or Keystone US reasonable evidence of Shipper’s:
 - (i) supply of Petroleum;
 - (ii) markets;
 - (iii) upstream and downstream storage and/or transportation arrangements; and

- (iv) certificates, permits, orders, licences or other authorizations from appropriate regulatory or governmental authorities having jurisdiction as are necessary to enable Shipper to Tender to Carrier at the Receipt Point(s), export from Canada, import and deliver within the United States and receive from Carrier or Keystone US at the Delivery Point(s) the quantities of Petroleum that Carrier is to transport under this Contract and any contract with Keystone US.

Carrier shall, in considering whether to request any Shipper Information, consider the commercial sensitivity and confidentiality of such information on the part of Shipper and, where commercially reasonable to Carrier's applications for Regulatory Approvals, seek to limit such information to Shipper Information that is not commercially sensitive or confidential. Notwithstanding the foregoing, if any Shipper Information (which for these purposes shall include the information provided by Shipper in Appendix 'A') is commercially sensitive and confidential, Carrier will, if requested by Shipper, exercise commercially reasonable efforts to obtain confidential treatment of such information by the governmental, regulatory, administrative or judicial authority that has requested such information. If Shipper fails to provide Carrier or Keystone US with any Shipper Information, then Carrier may terminate this Contract pursuant to Section 4.1.

2.4 Shipper agrees not to:

- a) oppose, intervene against, or seek to delay, whether directly or indirectly, any of Carrier's or Keystone US's applications for Regulatory Approvals before any of: (i) the NEB, (ii) the U.S. Federal Energy Regulatory Commission, (iii) any state certificating authorities in the United States, (iv) any judicial authorities with respect to matters regulated by the bodies or entities enumerated in paragraphs (i), (ii) or (iii) above, or (v) any appellate bodies of any of the foregoing; or
- b) make any statements, whether directly or indirectly, that indicate a lack of support for the Keystone Initial Facilities, the Expansion Facilities or the Keystone US Pipeline System. For greater certainty, Carrier acknowledges that Shipper shall not be considered to have violated its obligations under this Section 2.4(b) in respect of statements made by industry associations or organizations not controlled by Shipper, where Shipper complied with such obligations for statements made within and to such industry association or organization.

ARTICLE 3
CONDITIONS PRECEDENT

3.1 Subject to Section 2.1 and Article 4, Carrier's obligations under this Contract are subject to the satisfaction of the following conditions precedent:

- a) Carrier and its Affiliates shall have obtained, on terms acceptable to Carrier in its sole discretion, all Canadian Regulatory Approvals.
- b) Keystone US and its Affiliates shall have obtained, on terms acceptable to Keystone US in its sole discretion, all United States Regulatory Approvals.
- c) Carrier, in its sole discretion, shall have determined that it has received a minimum level of commitment from Term Shippers.

- d) Keystone US, in its sole discretion, shall have determined that it has received a minimum level of commitments from shippers who are parties to a petroleum transportation service and throughput agreement, on terms and conditions corresponding to this Contract ("**U.S. Expansion/Extension TSA**"), for transportation of Petroleum on the Keystone US Pipeline System.
- e) Shipper or an Affiliate of Shipper shall have contemporaneously with the execution of this Contract, entered into a U.S. Expansion/Extension TSA for transportation of Petroleum on the Keystone US Pipeline System, which U.S. Expansion/Extension TSA remains in full force and effect.
- f) Carrier's satisfaction, in its sole discretion, that Shipper has obtained on or before the Commencement Date, all required regulatory and governmental approvals for Shipper to receive service from Carrier and Keystone US as contemplated under this Contract and any petroleum transportation service and throughput agreement with Keystone US, including approvals necessary to export Petroleum from Canada and to import Petroleum into the United States.
- g) Carrier has announced that it is proceeding with the construction of the Keystone Initial Facilities.

Carrier and Keystone US shall have no liability or obligation whatsoever to Shipper in the event either or both of them (i) declines to file for, withdraws from, or rejects any Regulatory Approval, or (ii) determines that there is not sufficient commitment from shippers to justify proceeding with the Keystone Initial Facilities project, the Expansion Facilities project, and/or the Keystone US Pipeline System project, as a result of the conditions precedent stated in this Section 3.1 not having been satisfied, or waived by Carrier in its sole discretion.

- 3.2 The conditions precedent stated in Section 3.1 are included for the sole benefit of Carrier and may only be waived by Carrier.
- 3.3 The execution and delivery by Shipper of this Contract in connection with open season procedures initiated by Carrier for the Expansion Facilities (as such procedures may be replaced or amended from time to time) constitutes an irrevocable binding offer by Shipper that shall not be binding on Carrier unless and until this Contract is executed and delivered by Carrier, subject always to the other provisions of this Article 3. If this Contract is not executed by Carrier on or before June 30, 2007, Shipper's offer shall expire and be of no further force or effect.

ARTICLE 4 TERMINATION

- 4.1 If:
 - a) all of the conditions precedent set forth in Section 3.1 are not satisfied or waived by Carrier on or before the Commencement Date;
 - b) at any time during the period prior to the Commencement Date, Shipper fails to provide the Shipper Information as required under Section 2.3; or

- c) on or before the Commencement Date, Shipper becomes insolvent or makes an assignment or arrangement for the benefit of its creditors, or a receiver is appointed for Shipper or any of its assets, or if Shipper files a petition or proposal for bankruptcy or is petitioned or adjudicated a bankrupt,

Carrier may, subject to Section 4.4, terminate this Contract on fifteen (15) Days prior written notice to Shipper (a “**Carrier Termination Notice**”).

4.2 If:

- a) the conditions precedent set forth in Sections 3.1 (a) and (b) are not satisfied or waived by Carrier on or before October 31, 2009;
- b) the condition precedent set forth in Section 3.1(g) is not satisfied or waived by Carrier on or before December 31, 2009; or
- c) on or before the Commencement Date, Carrier becomes insolvent or makes an assignment or arrangement for the benefit of its creditors, or a receiver is appointed for Carrier or any of its assets, or if Carrier files a petition or proposal for bankruptcy or is petitioned or adjudicated a bankrupt,

Shipper may, subject to Section 4.4, terminate this Contract on thirty (30) Days prior written notice to Carrier (a “**Shipper Termination Notice**”), provided however, in respect of Section 4.2(a), if Carrier satisfies or waives such conditions precedent within such thirty (30) Day period, this Contract shall not terminate but shall continue in full force and effect.

4.3 If the Commencement Date has not occurred on or before December 31, 2012, either Carrier or Shipper may, subject to Section 4.4, terminate this Contract on thirty (30) Days written notice to the other Party (by delivery of a Carrier Termination Notice or a Shipper Termination Notice, as the case may be), provided however, if the Commencement Date occurs within such thirty (30) Day period, this Contract shall not terminate but shall continue in full force and effect.

4.4 If a right to terminate this Contract is exercised by Carrier pursuant to Sections 4.1 or 4.5, or by either Carrier or Shipper pursuant to Sections 4.2 or 4.3:

- a) if the termination of this Contract is due to a breach by Carrier of a material obligation under this Contract, Carrier shall be liable for all Development Costs;
- b) if the termination of this Contract is due to any of the following events:
 - (i) failure of any of the conditions precedent in Section 3.1(e) (except in relation to a termination of the U.S. Expansion/Extension TSA in accordance with Section 4.4 (a) of the U.S. Expansion/Extension TSA) or Section 3.1(f), to have been satisfied within a reasonable period, or to have been waived by Carrier in its sole discretion;
 - (ii) a right to terminate this Contract is exercised by Carrier pursuant to Section 4.1(b) or (c);

(iii) a right to terminate this Contract is exercised by Carrier pursuant to Section 4.5; or

(iv) a breach by Shipper of any material obligation under this Contract,

Shipper shall nonetheless remain obligated to pay to Carrier Shipper's Proportionate Share of all Development Costs; and

c) in all other circumstances, Shipper shall nonetheless remain obligated to pay to Carrier Shipper's Proportionate Share of fifty percent (50%) of all Development Costs,

which are incurred and committed to by or on behalf of Carrier up to and including the Day that either: (i) Carrier issues a Carrier Termination Notice, or (ii) Carrier receives the Shipper Termination Notice, as applicable, and such date shall be the "**Termination Date**". Carrier shall invoice Shipper for all amounts payable under this Section 4.4 and, within fifteen (15) Days following receipt of any such invoice, Shipper shall remit payment to Carrier. If Shipper fails to pay any invoice within such specified time frame, interest on the unpaid portion shall accrue from the date such payment is first overdue at the Prime Rate plus 2% until payment is made in full.

- 4.5 Shipper shall, if and when reasonably requested by Carrier at any time prior to the Commencement Date (with the reasonableness of such request considered in a manner consistent with Section 20.2 of Appendix 'C'), provide to Carrier financial assurances on terms and from an issuer satisfactory to Carrier (the "**Development Costs Financial Assurances**"), which may include a financial guarantee, irrevocable standby letter of credit or other form of financial assurance to secure the obligation or potential obligation of Shipper to pay its Proportionate Share of all Development Costs. If Shipper fails to provide Carrier with the Development Costs Financial Assurances within five (5) Banking Days of Carrier's written demand therefor, Carrier may, subject to Shipper's obligations under Section 4.4, terminate this Contract by providing further written notice to Shipper, which notice shall constitute the Carrier Termination Notice for the purposes of this Section 4.5.
- 4.6 Where an Expansion Contract with another Term Shipper is terminated under circumstances where reimbursement by such Term Shipper of a portion of Development Costs is required (as described in Section 4.4 of an Expansion Contract), an amount equal to such Term Shipper's Proportionate Share of all Development Costs incurred and committed to by or on behalf of Carrier up to and including the termination date of such Expansion Contract shall be applied to reduce the outstanding Development Costs.
- 4.7 In the event that Shipper is required to pay its Proportionate Share of Development Costs in accordance with Section 4.4, Carrier shall, on the request of Shipper, provide reasonable documentation in support of such Development Costs. Shipper shall have the right to conduct one (1) audit of the Development Costs within nine (9) Months of the date of Carrier's invoice pursuant to Section 4.4, in accordance with the audit procedure in Section 11.1. Shipper shall use commercially reasonable efforts to coordinate the conduct of any such audit with the other Term Shippers and with any equivalent audit carried out under the provisions of the U.S. Expansion/Extension TSA.

ARTICLE 5
COMMENCEMENT OF SERVICE

- 5.1 Carrier shall provide Shipper with thirty (30) Days prior written notice (the “**Advance Notice**”) of:
- a) Carrier’s schedule of Line Fill procedures requiring Shipper to deliver, over a period beginning approximately thirty (30) Days, and ending approximately one hundred twenty (120) Days following Shipper’s receipt of the Advance Notice, its proportionate share of Line Fill necessary for Pipeline System operation; and
 - b) Carrier’s intention to commence Working Stock acquisition activities.

Volumes of Line Fill and Working Stock shall be as determined by Carrier, acting reasonably. The Type of Line Fill and Working Stock shall be as determined by Shipper, acting reasonably in consultation with Carrier.

- 5.2 Shipper agrees to cooperate with Carrier and provide reasonable commercial support to Carrier in Carrier’s Working Stock acquisition, Line Fill and commissioning activities in respect of the Keystone Initial Facilities and the Expansion Facilities.
- 5.3 Upon completion of construction, commissioning, Line Fill and Working Stock acquisition activities pursuant to Section 5.2, Carrier shall provide Shipper with twenty (20) Days prior written notice of the date on which transportation service under this Contract is to commence (the “**Commencement Date**”). Ten (10) Days prior to the Commencement Date, Shipper shall provide Carrier with Shipper’s Monthly Nomination for the next ensuing Month on a Notice of Shipment as prescribed in the Tariff.

ARTICLE 6
TRANSPORTATION SERVICE

- 6.1 From and after the Commencement Date and during the Term:
- a) Shipper guarantees that it shall Tender (or otherwise pay for, as contemplated by Appendix ‘B’ and the Tariff, consistent with Section 8.1) at least the Monthly Volume at the Receipt Point, and
 - b) Carrier shall provide transportation service hereunder for Shipper, as a Term Shipper, in accordance with the provisions of the Tariff.
- 6.2 Carrier will only provide transportation service for Petroleum, as described in the Tariff.

ARTICLE 7
MAKE-UP RIGHTS AND BALANCING

- 7.1 In the event that Shipper is prevented from Tendering in any Month a volume of Petroleum equal to its Nomination for such Month, and such failure is solely due to a planned turnaround at any of:

- a) a refinery that typically receives deliveries of Petroleum carried on the Pipeline System under this Contract and the Keystone US Pipeline System under the equivalent U.S. Expansion/Extension TSA in respect of Shipper;
- b) a heavy oil upgrader that typically processes Petroleum carried on the Pipeline System under this Contract in respect of Shipper; or
- c) a bitumen recovery plant (whether steam assisted gravity drainage (SAGD) or other comparable facility) that typically produces and processes Petroleum carried on the Pipeline System under this Contract in respect of Shipper,

(each such facility being a “**Facility**”)

then, provided that Shipper has given to Carrier not less than the specified period of prior written notice of such Facility turnaround:

- (i) with a minimum of ninety (90) Days’ prior notice, Shipper shall, to the extent that, in Carrier’s discretion, operating conditions permit and capacity is available, be entitled to make-up such volumes in the twelve (12) Month period following such turnaround, or
- (ii) with a minimum of one hundred eighty (180) Days’ prior notice, Shipper shall, to the extent that, in Carrier’s discretion, operating conditions permit and capacity is available, be entitled to make-up such volumes for a two (2) Month period prior to such turnaround and in the ten (10) Month period following such turnaround,

provided that Shipper has first Tendered its Monthly Volume in such Months. The provisions of this Section 7.1 shall not apply to more than one (1) planned Facility turnaround for each such Facility in any thirty-six (36) Month period during the Term, and shall not apply to any unplanned Facility turnarounds. For greater certainty, the maximum volumes subject to any make-up rights pursuant to this Section 7.1 shall be those actual volumes forming part of the Monthly Volumes which were not Tendered by Shipper as a direct result of such Facility turnaround.

7.2 In the event that Shipper Tenders for shipment by Carrier in any Month a volume less than its Monthly Volume in circumstances where Section 7.1 does not apply (including in the case of an interruption, curtailment or reduction in accordance with Article 13 of the Tariff), Shipper shall, to the extent that, in Carrier’s discretion, operating conditions permit and capacity is available, be entitled to transport a make-up volume of the difference between its Monthly Volume and volumes actually Tendered for shipment in that Month in any of the next following twelve (12) Months, provided that (a) such make-up volume cannot exceed 5% of the Monthly Volume, and (b) Shipper has first Tendered its Monthly Volume in such Months before making use of any make-up volumes.

7.3 Where Shipper’s Monthly Nomination equals its Monthly Volume for a Month, and Carrier, solely for purposes of maintaining Carrier’s batching schedule, accepts Tenders from Shipper of a volume in excess of the Monthly Volume in such Month, Carrier and Shipper agree to use reasonable commercial efforts to reconcile such excess volume with the Monthly Volume transportable on the Pipeline System in the subsequent Month.

- 7.4 Subject to adjustments for the relevant Delivery Point and actual Types of Petroleum Tendered, no additional Fixed Toll will be payable by Shipper regarding make-up volumes Tendered in accordance with Sections 7.1 and 7.2.
- 7.5 For the purposes of the make up rights outlined in Section 7.1:
- a) Within three (3) Days after the end of (i) the two (2) Months prior to the relevant Facility turnaround, (ii) any Months during such turnaround, and (iii) the two (2) Months subsequent to such turnaround, Shipper shall deliver to Carrier a certificate signed by an authorized representative of Shipper setting forth the aggregate number of barrels of Petroleum actually produced or processed by such Facility in the relevant Month.
 - b) Within thirty (30) Days after the end of each Year in which there has been a Facility turnaround for which make up rights have been claimed by Shipper, Shipper shall provide to Carrier true and complete information, in such format and detail and with such back-up as Carrier shall reasonably request, as to the effect of such Facility turnaround on Shipper's Monthly Volumes.
 - c) Shipper shall maintain detailed books and records showing all such information as required to verify the timing and scope of turnarounds leading to make-up volumes during the Term. Carrier shall have audit rights in accordance with Section 11.1 in respect of such books and records (which in all instances shall be considered highly confidential for the purposes of Section 11.1) provided that such audit commences within twelve (12) Months after the expiration of the Term. Shipper shall keep all such books and records for a period of at least five (5) Years following the Month in which the relevant Facility turnaround occurred, or, if any audit is required or any controversy arises between the Parties pursuant to this Section 7.5, until such audit is completed or terminated or until such controversy is resolved.
 - d) If (i) Carrier's review of the information provided by Shipper pursuant to this Section 7.5 indicates that Shipper was not entitled to make up volumes in the manner contemplated by Section 7.1, or (ii) Shipper breaches its obligations to provide any of the information required by this Section 7.5, Shipper shall be liable to Carrier for payment of the difference between (A) the amount actually paid by Shipper for transportation service of Petroleum volumes in excess of its Monthly Volume, and (B) the Uncommitted Toll for such volumes, plus interest on the outstanding amount from the date of Tender until payment is made in full, at the Prime Rate plus 2%.
- 7.6 Any make-up rights of Shipper arising out the operation of this Article 7 shall cease and shall be forfeited by Shipper at the expiration of earlier of: (a) the time periods outlined in Sections 7.1 and 7.2, and (b) the end of the Term.

ARTICLE 8 TOLLS

- 8.1 On each Payment Due Date, Shipper shall pay for transportation service in accordance with this Contract and the Tariff, including: (i) the Fixed Toll, (ii) the Variable Toll, plus (iii) all other charges and adjustments as set forth in Appendix 'B'.

- 8.2 Subject to the terms and conditions set out in the Tariff, Shipper shall be entitled to Nominate for and receive its allocated share of Uncommitted Capacity. In any Month in which Shipper has Nominated for and been allocated a portion of Uncommitted Capacity in accordance with the Tariff, Shipper shall pay to Carrier on the Payment Due Date an amount equal to the product obtained by multiplying the Uncommitted Toll times (i) the portion of Uncommitted Capacity allocated by Carrier to Shipper for such Month; and (ii) the number of Days in such Month.
- 8.3 If Shipper has a Contract Volume of at least 3975m³/Day and Shipper or its Affiliate has specified a Cushing Delivery Point as its delivery point in Appendix 'A' of its U.S. Expansion/Extension TSA (and to the extent of the volumes allocated by Shipper or its Affiliate to the Cushing Delivery Point), then:
- a) provided that neither Shipper nor its Affiliate is then in default of any material obligation under this Contract or the U.S. Expansion/Extension TSA, Carrier agrees that, if Carrier and Keystone US transport volumes on the Pipeline System and the Keystone US Pipeline System (with a Cushing Delivery Point on the Keystone US Pipeline System and for the same Type of Petroleum) for a third party Non-Term Shipper at an Uncommitted Cushing Price lower than the Baseline Committed Price, then:
 - (i) for so long as such volumes are transported at such Uncommitted Cushing Price, Carrier and Keystone US shall collectively reduce the Shipper Fixed Price by an amount per Cubic Meter equal to the difference between such Uncommitted Cushing Price and the Baseline Committed Price; and
 - (ii) each of Carrier and Keystone US shall have sole discretion as to the allocation of any such reduction between the Pipeline System and the Keystone US Pipeline System.
 - b) For the purposes of this Section 8.3, the following interpretative principles shall apply:
 - (i) **"Baseline Committed Price"** shall mean, at any time, the Committed Price for the shortest contract term outlined in Appendix 'A' then remaining in effect;
 - (ii) **"Committed Price"** shall mean, for any Term Shipper, the sum of:
 - 1) the relevant Fixed Toll outlined in Part B of Appendix 'B', as adjusted for capital variance and Final Project Costs; plus
 - 2) the relevant Term Shipper Commitment Rate outlined in Part B of Appendix 'B' of the corresponding U.S. Expansion/Extension TSA, as adjusted for capital variance and Final Project Costs of the Keystone US Pipeline System; plus
 - 3) the Variable Toll; plus
 - 4) the Variable Rate under the corresponding U.S.

Expansion/Extension TSA;

- (iii) **“Cushing Delivery Point”** shall have the meaning given in the U.S. Expansion/Extension TSA;
 - (iv) **“Shipper Fixed Price”** shall mean the sum of: (1) the Fixed Toll payable by Shipper under this Contract plus (2) the Term Shipper Commitment Rate payable by Shipper or its Affiliate under the U.S. Expansion/Extension TSA;
 - (v) **“Uncommitted Cushing Price”** shall mean the sum of: (1) the Uncommitted Toll plus (2) the Uncommitted Rate for a Cushing Delivery Point on the Keystone US Pipeline System; and
 - (vi) all calculations of tolls and rates for the Pipeline System and the Keystone US Pipeline System will be made on a per Cubic Meter basis in Canadian dollars, with currency exchange calculations performed at a commercially reasonable exchange rate.
- c) Shipper shall not initiate or in any way support, directly or indirectly, any initiative in a governmental, regulatory, administrative or judicial context, whether in Canada or the United States, which if accepted, could be expected to lead to a reduction in the Shipper Fixed Price as described in Section 8.3(a)(i).

ARTICLE 9 TERM OF CONTRACT

- 9.1 This Contract shall be effective as of the date it is signed by Shipper and Carrier. The term of this Contract shall commence on the Commencement Date and shall continue until the anniversary of said Commencement Date in accordance with the contract term specified by Shipper in Appendix ‘A’, subject to adjustment pursuant to Section 9.2 and Article 15 of the Rules and Regulations (such period being the **“Term”**).
- 9.2 So long as Shipper is not otherwise in default of this Contract or the Tariff, Shipper shall have the single option, exercisable by written notice to Carrier received by Carrier not later than thirty (30) Months prior to the expiry of the Term, to extend the Term of this Contract:
- a) where the initial Term is less than twenty (20) Years, for a single additional five (5) Year period; or
 - b) where the initial Term is twenty (20) Years, for a single additional Yearly period nominated by Shipper, not to exceed ten (10) Years,

provided that Shipper or an Affiliate of Shipper shall have contemporaneously exercised the equivalent option for the Keystone US Pipeline System pursuant to and in accordance with its U.S. Expansion/Extension TSA with Keystone US. Such extension shall be on the same terms and conditions of this Contract, provided that the Fixed Toll for such extended Term shall be calculated in the manner described in paragraph B.3 of Appendix ‘B’.

ARTICLE 10
NOTICES

10.1 Any notice, request or demand ("**Notice**") to or upon the Parties shall be in writing and shall be validly communicated by the delivery thereof to its addressee, either personally, by courier or facsimile to the address set forth below:

In the case of Carrier: **TransCanada Keystone Pipeline GP Ltd.**

- (1) Mailing Address: 450 1st Street S.W.
Calgary, Alberta T2P 5H1
- (2) Delivery Address: 450 1st Street S.W.
Calgary, Alberta T2P 5H1
Attention: Contracts Administrator
Fax: 403-920-2451

In the case of Shipper:

- (1) Mailing Address:
- (2) Delivery Address:

Attention: _____
Fax: _____

Notice may be given by facsimile or other telecommunication device and any such Notice shall be deemed to be given four (4) hours after transmission. Notice may also be given by personal delivery or by courier and any such Notice shall be deemed to be given at the time of delivery; provided that any Notice delivered between the hours of 5:00 p.m. and 8:00 a.m., local time at the location at which the delivery is made, shall be deemed to have been received at 8:00 a.m., local time at the location at which the delivery is made, of the business day immediately following actual delivery. Any Notice may also be given by prepaid mail and any such Notice shall be deemed to be given four (4) business days after mailing. For the purposes of this Section, a "**business day**" is any day, excepting Saturdays, Sundays and statutory holidays at the place of receipt. In the event regular mail service, courier service, facsimile or other telecommunication service shall be interrupted by a cause beyond the control of the Parties, then the Party sending the Notice shall utilize any service that has not been so interrupted to deliver such Notice. Each Party shall provide Notice to the other of any change of address for the purposes hereof. Any Notice may also be given by telephone followed immediately by personal delivery, courier, prepaid mail, facsimile or other telecommunication, and any Notice so given shall be deemed to be given as of the date and time of the telephone notice.

ARTICLE 11
MISCELLANEOUS PROVISIONS

11.1 Where this Contract provides for audit rights, the auditing Party and its representatives shall have the right to audit the relevant books and records during regular business

hours and in a manner that does not unreasonably interfere with the other Party's business or operations (upon reasonable and timely notice and at the auditing Party's expense). In recognition of the likelihood that certain portions of those records may be considered highly confidential, the audit rights set forth in this Section 11.1 may, in those instances, be exercised through an independent auditor retained by, and at the expense of, the auditing Party. Such independent auditor shall not disclose the confidential information to the auditing Party, but may only provide its conclusion as to the accuracy of the information subject to the audit.

- 11.2 The Petroleum Toll Schedule – Uncommitted Volumes and the Rules and Regulations set out in the Tariff as in effect at that time, as each may be amended or approved from time to time by Carrier or the NEB, are all by reference made a part of and incorporated into this Contract and operations hereunder shall, in addition to the terms and conditions set out in this Contract, be subject to the provisions thereof. Carrier shall notify Shipper at any time that Carrier proposes to amend the Tariff, or otherwise files with the NEB revisions to the Tariff and shall provide Shipper with notice of such revisions.
- 11.3 This Contract, and any claims against Carrier arising directly or indirectly out of or in connection with this Contract, may be assigned, in whole or in part, by Shipper only:
- a) (i) with the prior written consent of Carrier, which consent shall not be unreasonably withheld, and (ii) when the proposed assignee has provided to Carrier either (A) such Development Costs Financial Assurances as Carrier may demand in accordance with this Contract, or (B) such Financial Assurances as Carrier may demand in accordance with the Tariff, as applicable; or
 - b) to its Affiliate, upon 30 Days' prior written notice to Carrier, provided that, until and unless the provisions of Section 11.3(a) are complied with, Shipper and its Affiliate shall remain jointly and severally liable for any and all obligations arising under or out of this Contract.
- 11.4 Carrier may assign this Contract and/or any rights arising hereunder without restriction to: (a) any other Person upon the merger, amalgamation, consolidation or reorganization of Carrier with such Person, (b) an Affiliate of Carrier, or (c) in connection with the sale of all or substantially all of the assets of Carrier to any other Person.
- 11.5 This Contract shall be construed and applied and be subject to the laws of the Province of Alberta and the laws of Canada applicable therein, and shall be subject to the rules, regulations and orders of any regulatory or legislative authority having jurisdiction. The Parties hereby consent and attorn to the courts of the Province of Alberta in respect of any action, suit or other judicial procedures in respect of this Contract. EACH PARTY SPECIFICALLY AND KNOWINGLY WAIVES ANY TRIAL BY JURY.
- 11.6 The failure by any Party to insist on the strict performance of any of the provisions of this Contract or to take advantage of any of the rights hereunder, shall not be construed as a waiver of any such provisions or relinquishment of any such rights, but the same will continue in full force and effect.
- 11.7 This Contract shall be binding upon and enure to the benefit of the respective successors and permitted assigns of the Parties.

11.8 This Contract may be executed by the Parties in counterparts and all such counterparts shall together constitute one and the same agreement.

IN WITNESS OF WHICH the Parties have executed and delivered this Contract as of the date first above written.

**TRANSCANADA KEYSTONE PIPELINE GP LTD., as
general partner on behalf of TRANSCANADA KEYSTONE
PIPELINE LIMITED PARTNERSHIP**

Per: _____

Per: _____

[SHIPPER]

Per: _____

Per: _____

APPENDIX 'A'
to the
PETROLEUM TRANSPORTATION SERVICE AGREEMENT
BETWEEN TRANSCANADA KEYSTONE PIPELINE GP LTD.
AND [SHIPPER]

CONTRACT TERM AND CONTRACT VOLUME

Shipper to Complete:

Contract Volume to be a minimum of 795 m³/Day (5,000 bbl/Day), in increments of 795 m³/Day (5,000 bbl/Day).

CONTRACT TERM	CONTRACT VOLUME
_____ Years (10, 15 or 20 Years)	_____ m ³ /Day (_____ bbl/Day)

APPENDIX 'B'
to the
PETROLEUM TRANSPORTATION SERVICE AGREEMENT
BETWEEN TRANSCANADA KEYSTONE PIPELINE GP LTD.
AND [SHIPPER]

*SCHEDULE OF TOLLS AND TOLLING PRINCIPLES:
**HARDISTY, ALBERTA TO THE INTERCONNECTION
WITH THE KEYSTONE US PIPELINE SYSTEM
AT THE INTERNATIONAL BOUNDARY***

A. TRANSPORTATION TOLLS

Every Month during the Term of the Contract Shipper shall pay to Carrier on the Payment Due Date, consistent with Article 8 of the Contract, the tolls and other charges set forth below and in the Tariff.

B. FIXED TOLL

1. **Calculation of Fixed Toll:** Every Month during the Term of the Contract, Shipper shall pay a “**Fixed Toll**” in respect of its Monthly Volume. The Fixed Toll shall be that toll set out in the table below that corresponds to the Term of the Contract specified by Shipper in Appendix ‘A’. Shipper’s Fixed Toll charges for any Month shall be the product obtained by multiplying the applicable Fixed Toll times the Monthly Volume.

<i>Term of Contract</i>	<i>Fixed Toll* in Cdn\$ Per m³ (bbl)</i>
10 Year	\$3.597 (\$0.572)
15 Year	\$3.547 (\$0.564)
20 Year	\$3.471 (\$0.552)

* Toll based on Estimated Project Costs, and to be adjusted for capital variance.

2. **Capital Variance:** The Fixed Toll will be adjusted to reflect capital variance, in the manner described in Part C below.
3. **Fixed Toll Applicable to Extension Term:** In the event that Shipper exercises its option to extend the Term of the Contract in the manner described in Section 9.2 of the Contract, the Fixed Toll applicable and payable for such extension Term shall be such Fixed Toll as is established by Carrier at the time of renewal for a five (5) year contract term.
4. **Extension due to Force Majeure:** In the event that the Term of the Contract is extended pursuant to Section 15.7 of the Tariff, no Fixed Toll in respect of the Contract Volume will be payable by Shipper during the period of such extension.

C. CAPITAL VARIANCE

1. **Definitions:** In this Part C, the following terms have the following meanings:

“Estimated Capital Variance” means the difference between the Initial Estimated Project Costs and the Re-estimated Project Costs.

“Final Capital Variance” means the difference between the Re-estimated Project Costs and the Final Project Costs.

“Final Project Costs” means the actual development, construction and acquisition costs of the Keystone Initial Facilities and the Expansion Facilities, expressed in Canadian dollars.

“Initial Estimated Project Costs” means the sum of CAD\$850 million, representing Carrier’s estimate, as of the time of the Contract, of the development, construction and acquisition costs of the Keystone Initial Facilities and the Expansion Facilities.

“Re-estimated Project Costs” has the meaning given that term in paragraph C.2.

2. **Re-estimated Project Costs:**

(a) Not later than two (2) Months following satisfaction or waiver by the Carrier of the conditions precedent set forth in Sections 3.1 (a) and (b) of the Contract, Carrier shall re-estimate the Initial Estimated Project Costs in a comparable manner as the Initial Estimated Project Costs (such new estimate being the **“Re-estimated Project Costs”**).

(b) Upon calculation of the Re-estimated Project Costs, Carrier will deliver a notice (the **“Revised Estimate Notice”**) to Shipper. The Revised Estimate Notice will set out the Re-estimated Project Costs, the resulting Estimated Capital Variance and any required adjustments to the Fixed Toll. For such purposes, the Fixed Toll shall be adjusted by a percentage decrease or increase, as the case may be, equal to the percentage change between the Initial Estimated Project Costs and the Re-estimated Project Costs.

(c) For all purposes under the Contract and the Tariff, from the date of the Revised Estimate Notice until the date specified in paragraph C.4(b) (if applicable), the Fixed Toll shall be the Fixed Toll outlined in the Revised Estimate Notice.

3. **Audit Right:** Shipper shall have the right to conduct one (1) audit of the calculations underlying the Re-estimated Project Costs within nine (9) Months of the date of the Revised Estimate Notice, in accordance with the audit procedure in Section 11.1. Shipper shall use commercially reasonable efforts to coordinate the conduct of any such audit with the other Term Shippers and with any equivalent audit carried out under the provisions of the U.S. Expansion/Extension TSA.

4. **Final Project Costs and Fixed Toll:**

(a) Not later than two (2) Years following the Commencement Date, Carrier shall make a final determination of the Final Project Costs. Upon such determination,

if there is a difference between the Re-estimated Project Costs and the Final Project Costs, Carrier will deliver a notice (the “**Capital Variance Notice**”) to Shipper. The Capital Variance Notice will set out the Final Project Costs, the resulting Final Capital Variance and the required adjustment to the Fixed Toll including an adjustment in respect of interest carrying charges attributable to the Final Capital Variance at the Prime Rate plus 2%, from the Commencement Date to the date of the Capital Variance Notice. For such purposes, the Fixed Toll shall be adjusted by a percentage decrease or increase, as the case may be, equal to one-half of the percentage change between the Re-estimated Project Costs and the Final Project Costs.

- (b) The Fixed Toll, adjusted to reflect the Final Capital Variance, will take effect for transportation services provided by Carrier in the first Month following the issuance of the Capital Variance Notice by Carrier. Accordingly, the first invoice issued by Carrier for transportation service provided in the first Month after the issuance of the Capital Variance Notice will charge the Fixed Toll adjusted to reflect the Final Capital Variance as set out in such notice.

D. VARIABLE TOLL

- 1. **Payment of Variable Toll:** In addition to paying the Fixed Toll each Month calculated on the Monthly Volume, Shipper shall pay on the Payment Due Date an amount equal to the product of (i) the Variable Toll (as calculated below) for the relevant Type(s) of Petroleum and the relevant Delivery Point, times (ii) the number of kilometres to such Delivery Point, times (iii) (subject to Section 8.1 of the Contract) the Monthly Volume actually Tendered by the Shipper for such Month.

$$\text{Variable Toll} = \frac{\text{Operating, Maintenance and Administration Costs for that Month}}{\text{Weighted Barrel Kilometres for that Month}}$$

Where:

Weighted Barrel Kilometres equals Light Barrel Kilometres + Heavy Barrel Kilometres;

Light Barrel Kilometres equals the sum for each Receipt Point of the product of the volume of Light Crude Tendered in a Month by all Shippers at such Receipt Point, multiplied by (i) the number of kilometres to the relevant Delivery Point, and (ii) 0.70; and

Heavy Barrel Kilometres equals the sum for each Receipt Point of the product of the volume of Heavy Crude Tendered in a Month by all Shippers at such Receipt Point, multiplied by the number of kilometres to the relevant Delivery Point.

The Variable Toll in respect of Heavy Crude shall be the amount as calculated above, and the Variable Toll in respect of Light Crude shall be such amount multiplied by 0.70.

- 2. **Estimate of Variable Toll:** On an annual basis during the Term of the Contract, Carrier will estimate the “Operating, Maintenance and Administration Costs” that Carrier will incur in operating, maintaining and administering the Pipeline System for the upcoming Year (on a Monthly basis), and allocate such costs over estimated volumes, to estimate

the “**Variable Toll**” for each Month in the Year. In estimating the Variable Toll, Carrier shall consider the average actual costs incurred by Carrier over prior Monthly periods as well as Carrier’s forecast of prices, Types of Petroleum, input costs, load factor on the Pipeline System, inflation, consumption patterns and any other relevant factors.

For the purposes of calculating the Variable Toll, “**Operating, Maintenance and Administration Costs**” shall include all operating, maintenance and administration costs and expenses incurred by or on behalf of Carrier in respect of the Pipeline System, including:

- (a) operating, maintenance, administrative and general costs and expenses (including pipeline inspection and pipeline repairs) and other overhead costs or expenses directly allocable to the Pipeline System;
 - (b) property taxes;
 - (c) capital taxes;
 - (d) insurance;
 - (e) power;
 - (f) regulatory costs;
 - (g) costs attributable to changes in laws and regulations (including income taxes based on changes in income tax rates or taxing methodology) that apply to Carrier or the Pipeline System;
 - (h) all costs and expenses associated with environmental remediation or leak cleanup; and
 - (i) all other costs and expenses similar in nature to any of the foregoing.
3. **Extraordinary Maintenance Costs/Non-routine Adjustments:** Where maintenance costs and expenses associated with any single expenditure or expenditures in respect of the same or a common matter or project exceed Cdn\$2,000,000, such amounts will be treated as a non-routine adjustment (“**NRA**”). Carrier will provide prompt notice to Shipper of any NRA and consult with the Term Shippers as to a reasonable allocation of such NRA into the Variable Toll. All NRAs will be (i) added to the Variable Toll in each Year following the inclusion of the related adjustment into the Operating, Maintenance and Administration Costs, and (ii) allocated into the Variable Toll for each Month in such Year and any subsequent Years for so long as, and to the extent that, such maintenance costs and expenses have not been fully recovered by Carrier through the Variable Toll.
4. **Notice of Estimated Variable Toll:** Carrier shall provide Shipper with its estimate of the Variable Toll for each Month (based on the Type(s) of Petroleum) for the upcoming Year in the notice of Commencement Date contemplated in Section 5.3 of the Contract. Thereafter, Carrier will revise the estimated Variable Toll annually and provide Shipper with such revised toll, together with details of its calculation and explanation for any adjustments from the previous Variable Toll, on or before December 1 of each Year

during the Term. Such estimated Variable Toll shall take effect as of January 1 of the succeeding Year.

5. **Final Variable Toll:** After the end of each Year, Carrier will determine the actual Operating, Maintenance and Administration Costs incurred by Carrier in operating the Pipeline System for such Year, as recorded in Carrier's financial records. Such actual costs shall be allocated over the volumes Tendered by all shippers in such Year to determine the final Variable Toll. Carrier will provide Shipper with notice of the final Variable Toll, together with details of its calculation and explanation for any adjustments from the estimated Variable Toll. If the final Variable Toll for the applicable Year is greater than or less than the estimated Variable Toll charged to Shipper for such Year, Carrier shall apportion the difference in 12 equal Monthly instalments for the upcoming Year and credit (if the difference is negative) or charge (if the difference is positive), as the case may be, Shipper an amount equal to the difference between the estimated Variable Toll and the final Variable Toll and the aggregate of Shipper's Nominations, up to a maximum of Shipper's Monthly Volume for such Year. Additional amounts to be charged to Shipper or credited to Shipper shall incur an interest carrying charge on the outstanding balance at the Prime Rate, from the Month the relevant Operating, Maintenance and Administration Costs were incurred, until (i) in the case of a charge, the relevant charge has been paid in full by Shipper in the manner contemplated in this paragraph D.5, or (ii) in the case of a credit, the date such credit is issued by Carrier.
6. **Audit Right:** Shipper shall have the right to conduct one (1) audit of the calculations underlying the final Variable Toll within nine (9) Months of the date of Carrier's notice of the final Variable Toll pursuant to paragraph D.5, in accordance with the audit procedure in Section 11.1. Shipper shall use commercially reasonable efforts to coordinate the conduct of any such audit with the other Term Shippers and with any equivalent audit carried out under the provisions of the U.S. Expansion/Extension TSA.
7. **Incentive Tolling Arrangements:** After the third anniversary of the Commencement Date, Carrier shall seek to negotiate an incentive tolling agreement with the Term Shippers whereby Term Shippers and Carrier would be entitled to share in any cost savings realized as a result of any reductions in the Operating, Maintenance and Administration Costs.

APPENDIX 'C'
to the
PETROLEUM TRANSPORTATION SERVICE AGREEMENT
BETWEEN TRANSCANADA KEYSTONE PIPELINE GP LTD.
AND [SHIPPER]

PRO FORMA RULES AND REGULATIONS

APPENDIX 5-2

PETROLEUM TARIFF

Keystone Pipeline System

Petroleum Tariff

Rules and Regulations Governing the Transportation of Petroleum

from
Hardisty, Alberta
to the International Boundary at or near
Haskett, Manitoba

Issued by:
TRANSCANADA KEYSTONE PIPELINE LTD.
450 – 1st Street SW
Calgary, Alberta T2P 5H1

Compiled by:
[Name]
[Title]
450 – 1st Street SW
Calgary, Alberta T2P 5H1
Phone: (403) 920 – []
E-mail: [Name]@transcanada.com

Effective: [DATE]

ARTICLE 1 – DEFINITIONS

1.1 Definitions. Except where the context expressly states another meaning, the following terms, when used in these Rules and Regulations, or in any Contract or Petroleum Toll Schedule into which these Rules and Regulations are incorporated, shall have the following meanings:

“**Adverse Encumbrance**” has the meaning set out in Section 16.1.

“**Affiliate**” means any Person that, directly or indirectly:

- i) controls a Party;
- ii) is controlled by a Party; or
- iii) is controlled by the same Person that controls a Party;

it being understood and agreed that for purposes of this definition the terms “controls” and “controlled by” shall mean the power to direct or cause the direction of the management and policies of another Person whether through the ownership of shares, a contract, trust arrangement or any other means, either directly or indirectly, that results in control in fact and without restricting the generality of the foregoing includes, with respect to the control of or by a corporation, the ownership of shares carrying not less than 50% of the voting rights regardless of whether such ownership occurs directly or indirectly, as contemplated above.

“**Allocated Volume**” means that Monthly volume of Pipeline System capacity allocated to a Shipper pursuant to Article 7.

“**API**” means American Petroleum Institute.

“**ASTM**” means American Society for Testing and Materials.

“**Available Capacity**” has the meaning set out in Section 7.2.

“**Banking Day**” means any day that the financial institution designated by Carrier for payment pursuant to Section 9.1 conducts business.

“**Carrier**” means TransCanada Keystone Pipeline Ltd. and its successors or assigns.

“**Commencement Date**” means (i) in the case of transportation service for Uncommitted Capacity, the date upon which Petroleum is first Tendered to Carrier at a Receipt Point and authorized by Carrier for transportation service hereunder, and (ii) in the case of transportation service for Contract Volumes, the “Commencement Date” as defined in the Contract between Carrier and each Term Shipper.

“**Committed Capacity**” means that capacity on the Pipeline System equal to the sum of the Monthly Volumes of all Term Shippers.

“**Contract**” means a Petroleum Transportation Service Agreement between Carrier and a Term Shipper, in the form attached to these Rules and Regulations.

“**Contract Volume**” means the daily volume of Petroleum specified by Term Shipper in Appendix ‘A’ of a Contract, which Shipper commits to ship on the Pipeline System under the terms of such Contract.

“**Contract Year**” means a period of 12 consecutive Months beginning on the Commencement Date.

“**Cubic Meter**” (m^3) means the volume of Petroleum which occupies one cubic metre when such Petroleum is at a temperature of fifteen degrees Celsius ($15^\circ C$) and at a pressure of 101.325 kiloPascals and equals 264.1721 United States gallons and 6.2898108 barrels, under the same conditions.

“**Day**” means a period of 24 consecutive hours, beginning and ending at 7:00 a.m. Mountain Time. The reference date for any Day shall be the calendar date upon which the 24 hour period shall commence.

“**Default Notice**” has the meaning set out in Section 12.1.

“**Defaulting Party**” has the meaning set out in Section 12.1.

“**Deliver**” and any derivative thereof, means the delivery of Petroleum by Carrier to Shipper at a Delivery Point pursuant to the Tariff.

“**Delivery Point**” means the point at which the facilities of Carrier interconnect with the facilities of Keystone US at the International Boundary at or near Haskett, Manitoba.

“**Financial Assurances**” has the meaning set out in Section 20.1.

“**Force Majeure**” has the meaning set out in Section 15.2.

“**Gross Standard Volume**” means the volume of Petroleum measured in Cubic Meters in accordance with standards established by ASTM.

“**Heavy Crude**” means Petroleum having a density from and including 876 kilograms per Cubic Meter (kg/m^3) up to and including $940 kg/m^3$, and a viscosity from and including 20 square millimetres per second (mm^2/s) up to and including $350 mm^2/s$.

“**Keystone US**” means TransCanada Keystone Pipeline, LLC and its successors and assigns.

“**Keystone US Pipeline System**” means the Petroleum receipt, delivery, pipeline, pumping, monitoring, control and ancillary facilities owned by Keystone US commencing at the International Boundary at or near Haskett, Manitoba and terminating at or near Wood River/Patoka, Illinois, as such facilities may be modified, expanded or extended from time to time.

“**kiloPascal**” (**kPa**) is equivalent to 0.1450377 pounds per square inch (psi).

“**Light Crude**” means Petroleum having a density up to but not including 876 kilograms per Cubic Meter (kg/m^3), and a viscosity up to but not including 20 square millimetres per second (mm^2/s).

“**Line Fill**” means the volume of Petroleum in transit in the Pipeline System between the Receipt Point and the Delivery Point.

“**Month**” means the period beginning at the first Day of the calendar month and ending at the same hour on the first Day of the next succeeding calendar month.

“Monthly Nomination” has the meaning set out in Section 7.1.

“Monthly Term Shipper Allocation” has the meaning set out in Section 7.2.

“Monthly Volume” means the product of the Contract Volume times the number of Days in the applicable Month.

“NEB” means the National Energy Board of Canada or any regulatory or governmental authority hereafter having a similar jurisdiction in substitution therefor.

“Net Standard Volume” means the Gross Standard Volume minus the basic sediment, water component and other impurities.

“Nomination” and any derivative thereof, means the volume of Petroleum specified by Shipper in the Notice of Shipment as described in Section 7.1.

“Non-Term Shipper” means a Shipper that is not a Term Shipper.

“Notice of Shipment” means the form prescribed by Carrier from time to time to be used by Shipper to notify Carrier of proposed Tenders for the following Month, as such form may be amended by Carrier from time to time. A Notice of Shipment may include, without limitation, Shipper’s name, contact person and contact information, Month of shipment, Volume and Type of Petroleum to be Tendered in such Month, and the designated Receipt Point(s) and Delivery Point(s).

“Party” means Carrier or a Shipper and **“Parties”** means both Carrier and a Shipper.

“Payment Due Date” means the date that is ten (10) Days after the date that Carrier issues an invoice pursuant to Section 9.1. If such Day is not a Banking Day, then the Payment Due Date shall be the first Banking Day immediately prior to the 10th Day after Carrier issues such invoice.

“Person” means any natural person, firm, trust, partnership, corporation, limited liability company, joint venture, association, joint stock company, enterprise, unincorporated entity, government, governmental agency or other entity.

“Petroleum” means the direct liquid product of oil wells, oil processing plants, oil sands, or a mixture of such products, but does not include natural gas or natural gas liquids. For the purposes of this definition, “oil” includes crude oil, synthetic crude oil, condensate or a bitumen blend consisting of bitumen blended with synthetic crude oil, condensate or both, that is recovered in processing and that is in a liquid state at the conditions under which its volume is measured or estimated.

“Petroleum Toll Schedule – Uncommitted Volumes” means the schedule of tolls for the transportation of Uncommitted Capacity as modified and published by Carrier from time to time.

“Pipeline System” means the Petroleum receipt, delivery, pipeline, pumping, monitoring, control and ancillary facilities owned by Carrier commencing at or near Hardisty, Alberta and terminating at the International Boundary at or near Haskett, Manitoba, as such facilities may be modified, expanded or extended from time to time.

“Prime Rate” means the variable annual rate of interest charged by the Royal Bank of Canada, Main Branch, Calgary, Alberta, as its reference rate of interest for calculating interest on variable rate commercial loans made in Canadian dollars in Canada to its most creditworthy customers.

“**Receipt Point(s)**” means the inlet flange of Carrier’s receipt meter at Hardisty, Alberta or elsewhere as the Tariff may designate from time to time.

“**Remaining Available Capacity**” has the meaning set out in Section 7.2.

“**Shipper**” means a Person who contracts with Carrier for the transportation of Petroleum pursuant to the Tariff.

“**Special Damages**” means, collectively, any indirect, consequential (including loss of revenue or loss of profit), incidental, punitive or exemplary damages.

“**Tariff**” means the terms and conditions contained in these Rules and Regulations, and the Petroleum Toll Schedule – Uncommitted Volumes, and, in the case of a Term Shipper, a Contract, all as may be amended from time to time.

“**Tender**” and any derivative thereof, means the delivery by a Shipper to Carrier at a Receipt Point of a stated quantity and Type of Petroleum for transportation from a Receipt Point to a Delivery Point pursuant to a Nomination.

“**Term Shipper**” means a Shipper that is a party to a Contract.

“**Type**” in relation to Petroleum, means Light Crude or Heavy Crude, as applicable.

“**Uncommitted Capacity**” means that volume of capacity on the Pipeline System determined each Month by Carrier, in its sole discretion, that is available after Term Shippers’ Nominations in respect of the Committed Capacity have been provided for.

“**Uncommitted Toll**” means the tolls and other charges contained in the Petroleum Toll Schedule – Uncommitted Volume.

“**Working Stock**” means the volume of Petroleum required to be held by Carrier for operational and scheduling purposes as determined by and specified from time to time by Carrier.

“**Year**” means a period of 365 consecutive Days; provided however, that any year which contains the date February 29 shall consist of 366 consecutive Days.

- 1.2 **Construction.** In construing these Rules and Regulations; (a) unless otherwise specified, references to Articles and Sections refer to Articles and Sections of these Rules and Regulations, (b) no consideration shall be given to the captions of any Articles or Sections, which are inserted for convenience in locating the provisions of these Rules and Regulations and not as an aid in their construction, and (c) the singular shall be deemed to include the plural and *visa versa*.

ARTICLE 2 – COMMODITY

- 2.1 The Tariff applies to the transportation of Petroleum by Carrier and Carrier shall have no obligation to transport any commodity other than Petroleum.

ARTICLE 3 – ORIGIN AND DESTINATION

- 3.1 **Acceptance and Delivery.** Petroleum will be accepted for transportation only when Tendered at a Receipt Point and Nominated for Delivery to the Shipper or its consignee at a Delivery Point pursuant to the Tariff.

- 3.2 **Delivery Facilities.** Petroleum will be acceptable for transportation only when the Shipper has provided or made arrangements for the necessary facilities and/or transportation service satisfactory to Carrier at the specified Delivery Point for handling the Petroleum at the rate of flow at which Carrier is then operating the Pipeline System at such Delivery Point.

ARTICLE 4 – QUALITY

- 4.1 **Permitted Petroleum.** Only that Petroleum having properties that conform to the specifications of Petroleum described in Sections 4.2, 4.3 and 4.4 will be permitted in the Pipeline System. Shipper will not Tender to Carrier, and Carrier will have no obligation to accept, transport or Deliver Petroleum which does not meet said specifications.
- 4.2 **Specifications of Petroleum.** For the purposes of Section 4.1, the specifications of the Petroleum shall be as follows: (i) Reid Vapor Pressure shall not exceed one hundred and three kiloPascals (103kPa); (ii) sediment, water and other impurities shall not exceed one-half of one percent (0.5%) of volume, as determined by the centrifuge method in accordance with ASTM D96/API 2542 standards or by any other test as may be established by Carrier from time to time; (iii) the temperature at the Receipt Point shall not exceed thirty-eight degrees Celsius (38°C); (iv) the density at the Receipt Point shall not exceed nine hundred and forty kilograms per Cubic Meter (940 kg/m³); (v) the kinematic viscosity shall not exceed three hundred and fifty (350) square millimetres per second (mm²/s) determined at Carrier's reference line temperature; and (vi) shall have no physical or chemical characteristics that may render such Petroleum not readily transportable by Carrier or that may materially affect the quality of other Petroleum transported by Carrier or that may otherwise cause disadvantage or harm to Carrier or the Pipeline System, or otherwise impair Carrier's ability to provide service on the Pipeline System.
- 4.3 **Modifications to Specifications.** Notwithstanding Sections 4.1 and 4.2, or any other provision in the Tariff to the contrary, Carrier shall have the right to make any reasonable changes to the specifications under Section 4.2 from time to time to ensure measurement accuracy and to protect Carrier, the Pipeline System or Carrier's personnel.
- 4.4 **Freedom from Objectionable Matter.** Petroleum shall not contain sand, dust, dirt, gums, impurities or other objectionable substances which may be injurious to Carrier or the Pipeline System, or which may otherwise interfere with the transportation of Petroleum in the Pipeline System.
- 4.5 **Failure to Conform to Specifications.** If Carrier determines that a Shipper does not comply with the provisions of Section 4.2, 4.3 or 4.4 of these Rules and Regulations, then, upon notice from Carrier, such Shipper shall, at Shipper's sole cost and expense, remove its Petroleum from the Pipeline System as and when directed by Carrier.
- 4.6 **Failure to Remove Objectionable Matter.** If a Shipper fails to remove its Petroleum from the Pipeline System in accordance with the provision of Section 4.5, then, in addition to any other remedy available to Carrier under the Tariff, at law or in equity, Carrier shall have the right to remove and sell such Petroleum in any manner deemed appropriate by Carrier. Carrier shall pay from the proceeds of such sale all costs and expenses incurred by Carrier with respect to the storage, removal and sale of such Petroleum and Carrier shall be entitled to retain a reasonable pre-estimate of any damages, losses, costs, expenses and other charges incurred or anticipated to be incurred by Carrier in respect of the presence of such objectionable matter. The remainder of such proceeds, if any, shall be paid by Carrier to the Shipper or as directed in writing by Shipper. Carrier may take such further action and recourse as it deems appropriate to compensate, mitigate

or reimburse Carrier for any adverse impact to Carrier or the Pipeline System attributable to the presence of such objectionable matter.

ARTICLE 5 – MEASUREMENTS

- 5.1** The volumetric measurement base of all Petroleum referred to in the Tariff shall be one (1) Cubic Meter.
- 5.2** All Petroleum received by Carrier for transportation shall be gauged, metered and tested by a representative of Carrier prior to its acceptance. The Shipper may have a representative present at the gauging, metering and testing. If tank tables are used, quantities will be computed from regularly compiled tank tables showing one hundred percent (100%) of the full capacity of the tanks. Whenever there is substantial evidence of meter malfunctions in a custody transfer measurement, the parties involved in the custody transfer shall negotiate an appropriate adjustment on the basis of the most reliable and accurate information available. Such adjustments may only be claimed for a period of up to ninety (90) Days after the date of the meter malfunction. If the Parties fail to reach a negotiated agreement of an appropriate adjustment, the matter shall be referred to arbitration for final determination pursuant to the *Arbitration Act* of Alberta.
- 5.3** All Petroleum shall be received and Delivered with documented meter tickets or the accepted electronic equivalent, showing:
- (i) Gross Standard Volume and Net Standard Volume received and Delivered;
 - (ii) kinematic viscosity, based on the lower of the temperature of the Petroleum at the time of receipt or Carrier's line temperature at the time of receipt;
 - (iii) weighted average density;
 - (iv) weighted average pressure; and
 - (v) deductions for basic sediment, water and other impurities.
- All measurement procedures are to be conducted in accordance with API/ASTM standards and pipeline industry practice or such other tests as may be agreed upon by Carrier and Shippers.
- 5.4** Carrier shall account to each Shipper for one hundred percent (100%) of Petroleum Tendered for its account. Adjustments for shortages, including losses for shrinkage and evaporation incident to Carrier transportation, will then be based on the proportion that such Shipper's total Deliveries from the Carrier by stream bears to the total Deliveries of all Shippers from the Carrier by stream. Overages or shortages will be calculated and prorated to Net Standard Volumes for Petroleum shipped on a Monthly basis.
- 5.5** Carrier's representative, upon reasonable notice to Shipper, shall have the right to enter upon the Shipper's premises where Petroleum is stored and have access to any and all tankage for the purpose of making any examination, inspection, measurement or test provided for under the Tariff.
- 5.6** Petroleum shall be classified by Type by the Carrier on the basis of measured density and viscosity at the time of Tender. Where the density of the Petroleum falls within the density range of one Petroleum Type and the viscosity of Petroleum falls within the viscosity range of another Type, then the Petroleum shall be deemed to be in the Type with the higher transportation toll.

ARTICLE 6 – SEGREGATION AND CHANGES IN QUALITY

- 6.1 Delivery of Types of Petroleum.** Carrier shall endeavour to deliver substantially the same type and quality of Petroleum as that received by Carrier from Shipper. Notwithstanding the foregoing, Carrier shall not be obligated to make Delivery of Petroleum of identical quality or specification Tendered by Shipper.
- 6.2 Alterations of Specifications.** Shipper acknowledges and accepts that any Petroleum Tendered for transportation will be received by Carrier only on the condition that such Petroleum shall be subject to such changes in density, specification, quality and characteristics while in transit as may result from the transportation thereof in the Pipeline System, including, without limitation, the mixture of said Petroleum with other Petroleum (meeting the specifications set forth in Section 4.2) in the Pipeline System. Carrier shall not be liable for any Special Damages resulting from an alteration in density, specification or other quality or characteristic of Petroleum transported by Carrier, and shall not be liable for any direct damages resulting from any such alteration, except where such damages are directly caused by the gross negligence or wilful misconduct of Carrier.
- 6.3 Segregated Movement.** If the Petroleum Nominated by a Shipper is of a type or quality not then being transported through the Pipeline System but meets the specifications set out in Article 4, Carrier may, in its sole discretion and as operating conditions permit, at the request of Shipper, attempt to make Delivery of substantially the same type and quality of Petroleum at the Delivery Point. Notwithstanding the foregoing, Carrier’s efforts under this Section 6.3 shall not constitute a waiver, release or amendment of the provisions set forth in Sections 6.1 and 6.2, which provisions shall nonetheless apply to the transportation and Delivery of Petroleum by Carrier under this Section 6.3. To the extent the transportation of such Petroleum causes the Pipeline System or Carrier to incur extraordinary costs not normally incurred for other types or quality of Petroleum typically transported through the Pipeline System, such Shipper shall be liable for, and shall indemnify Carrier for, all such costs.

ARTICLE 7 – NOMINATIONS, TENDERS AND APPORTIONMENT

- 7.1 Monthly Nominations.** Each Month, in respect of transportation service for the following Month, Shippers shall submit their respective Nominations (each a “**Monthly Nomination**”) to Carrier on a Notice of Shipment delivered no later than 7:00 am, Mountain Time on Carrier’s designated Monthly Nomination date. If a Shipper fails to Nominate any volume, the Shipper’s Monthly Nomination will be deemed to be zero. If Shipper’s Tenders have been curtailed pursuant to any provision of the Tariff, Shipper shall be deemed to have submitted a Nomination equal to its Monthly Nomination reduced by the level of curtailment. In support of a Shipper’s Monthly Nomination, upon notice from Carrier, Shipper shall provide written third party verification of the availability of its supply of Petroleum and of its ability to remove or have removed such Petroleum at the Delivery Point. Carrier shall not be obligated to accept Shipper’s Monthly Nomination where such verification is, in the sole discretion of Carrier, unacceptable to Carrier.
- 7.2 Apportionment.** Following the receipt by Carrier of Monthly Nominations, Carrier shall, in its sole discretion, determine the capacity available on the Pipeline System for transportation service in that Month (“**Available Capacity**”). In the event Monthly Nominations exceed Available Capacity, then, having regard to the operating conditions of the Pipeline System, as determined by Carrier in its sole discretion, the Available Capacity shall be allocated by Carrier as follows:

- (i) Firstly, among Term Shippers as follows: Each Term Shipper shall be allocated its Monthly Nomination up to a maximum level of its Monthly Volume (the sum of all such allocations to Term Shippers is referred to as the “**Monthly Term Shipper Allocation**”, and the positive difference, if any, between Available Capacity and the Monthly Term Shipper Allocation is referred to as the “**Remaining Available Capacity**”); and
- (ii) Secondly, if there is any Remaining Available Capacity, then among Term Shippers and Non-Term Shippers on a pro rata basis calculated for each as follows: Remaining Available Capacity multiplied by a fraction, the numerator which is, (a) in the case of a Term Shipper, the portion (if any) of that Term Shipper’s Monthly Nomination which exceeds its Monthly Volume, and, (b) in the case of a Non-Term Shipper, its Monthly Nomination, and the denominator of which is the sum of; (A) the total by which all Term Shipper Monthly Nominations exceed their Monthly Volumes and (B) the total Monthly Nominations by Non-Term Shippers.

7.3 Batch Size. A Shipper’s Tender will be accepted only when the total quantity covered thereby will be Delivered to Carrier at a Receipt Point for transportation within said Month at a daily rate, or in quantities and at times to be specified or accepted by Carrier. Except as hereunder provided, Carrier will not accept a batch size of less than thirty two thousand Cubic Meters (32,000 m³) (200,000 bbls). Carrier may, in its sole discretion, (i) agree to accept Tenders of Petroleum in smaller batches, and (ii) outline procedures or criteria under which it may accept Tenders of Petroleum in smaller batches.

7.4 Tenders. A Shipper desiring to Tender Petroleum for transportation shall make such Tender in accordance with Carrier’s established Tender process. If Shipper is unable to provide Carrier with satisfactory evidence of Shipper’s ability to remove from a Delivery Point the volume of Petroleum to be Tendered, Carrier may reduce the amount of Petroleum received from Shipper at a Receipt Point to the amount determined by Carrier which Shipper has verified it will be able to remove at that Delivery Point.

7.5 Late Nominations. If capacity is available and operating conditions permit, as determined by Carrier in its sole discretion, Carrier may accept Nominations or revise Nominations after Carrier’s designated Monthly Nomination date.

7.6 Working Stock. Shipper shall supply its proportionate share of Working Stock as determined from time to time by Carrier.

7.7 Term Shipper Nominations. In the event that a Term Shipper fails to Nominate and/or Tender a volume of Petroleum equal to the Monthly Volume, it shall nonetheless pay to Carrier the tolls determined pursuant to the Contract. Whether Nominations and Tenders meet Monthly Volume requirements will be assessed relative to receipts at the Receipt Point.

7.8 Term Shipper Make Up Rights. Term Shippers who fail to meet their Monthly Volume requirements in a Month will be subject to uniform provisions with respect to their ability to make up those volumes in subsequent Months, in the manner described in the Contract. Any make-up volumes to be Tendered by Term Shippers pursuant to the Contract shall be Nominated and ranked equally with all volumes Nominated by Non-Term Shippers for the purpose of allocating available capacity on the Pipeline System pursuant to Section 7.2.

7.9 Non-Term Shippers. Each Non-Term Shipper shall in each Month Tender to Carrier a volume of Petroleum equal to its Allocated Volume. Such Non-Term Shipper shall pay to Carrier an amount equal to the product of (i) the Uncommitted Toll, times (ii) Non-Term Shipper’s

Allocated Volume. The transportation of Petroleum by Carrier for Non-Term Shippers shall be in accordance with and subject to the terms and conditions of the Tariff.

- 7.10 Uniform Tenders.** Each Shipper shall endeavour to Tender Petroleum to Carrier in equal daily quantities in each Month in accordance with Carrier's batching schedule to make up its Allocated Volume and having such Petroleum specifications as will reasonably be compatible with Pipeline System operations. Carrier may, in its sole discretion, curtail receipts of Petroleum from a Shipper if such Shipper attempts to Tender a daily volume in excess of volumes equal to its Allocated Volume in accordance with Carrier's batching schedule.
- 7.11 Flow Rates and Volumes.** Carrier will normally take full stream receipts at Receipt Points and will make full stream Deliveries of Petroleum at Delivery Point(s) at flow rates and volumes compatible with the Pipeline System operations.

ARTICLE 8 – APPLICATION OF TOLLS

- 8.1 Effective Tolls.** Petroleum accepted for transportation shall be subject to the tolls and other charges in effect on the date of receipt of such Petroleum by Carrier at the Receipt Point(s), irrespective of the date of Nomination or date of Delivery at the Delivery Point(s).
- 8.2 Toll Attribution.** The tolls charged to Shipper shall be allocated as to volume of Petroleum and Type of Petroleum in accordance with the Tariff.

ARTICLE 9 – PAYMENT OF TARIFF CHARGES AND LIEN FOR UNPAID CHARGES

- 9.1** Shipper shall pay to Carrier the tolls and other charges payable in accordance with the Tariff on or before the Payment Due Date. Each Month Carrier will issue to Shipper an invoice detailing (i) the tolls payable to Carrier pursuant to the Tariff for service provided during the previous Month, and (ii) any other charges for which Shipper is liable under the Tariff (including, without limitation, any applicable taxes). Invoice payments shall be made on or before the Payment Due Date to the account of Carrier at the Royal Bank of Canada, Main Branch, Calgary, Alberta, or such other bank or financial institution as Carrier may designate in writing.
- 9.2** Carrier shall have a lien, charge and security interest on all Petroleum in its possession Tendered by or on behalf of Shipper, and on all proceeds of such Petroleum, to secure the performance of all obligations of Shipper under the Tariff, including without limitation, the payment of any and all unpaid tolls and other charges that are due Carrier and unpaid by Shipper. Carrier may withhold such Petroleum from Delivery until all such unperformed obligations or unpaid tolls and charges have been performed or paid in full, as the case may be. The lien and other remedies contained in this Section 9.2 are in addition to any other remedies available to Carrier at law, in equity or under the Tariff.
- 9.3** Should Shipper fail to pay the full amount of any invoice described in this Article 9 on or before the Payment Due Date, in addition to any other remedy Carrier may have under the Tariff, at law or in equity:
- (i) interest on the unpaid portion of the invoice shall accrue daily, commencing on the Day immediately following the Payment Due Date, at a rate of interest per annum equal to the Prime Rate plus two percent (2%); and

- (ii) Carrier may, upon five (5) Banking Days written notice to Shipper, suspend further receipt and Delivery of Petroleum from and to Shipper until such amount is paid in full, provided however, that any such suspension shall not relieve Shipper from any obligation to pay any further tolls, charges or other amounts payable to Carrier under the Tariff. If, at any time during such suspension, Shipper pays the full amount payable to Carrier, Carrier shall, within two (2) Banking Days of receipt of payment, recommence receipt and Delivery of Shipper's Petroleum. If Shipper fails to pay the full amount payable to Carrier after such suspension, Carrier may, at its option at any time, in addition to any other remedy that may be available to it under the Tariff, at law or in equity, upon three (3) Banking Days written notice to Shipper, (a) seize and sell any of Shipper's Petroleum then in Carrier's possession pursuant to Section 9.4, and/or (b) for a Term Shipper, terminate the Contract with such Term Shipper, provided however, if Carrier terminates the Contract in accordance with the Tariff, Term Shipper shall remain liable for and shall pay to Carrier within five (5) Banking Days of such termination pursuant to Carrier's invoice, the aggregate of: (A) the Fixed Toll payable under the Contract for the unexpired term of such Contract, with such amount equal to the Monthly Volume multiplied by the number of unexpired Months in the Contract, which product in turn shall be multiplied by the Fixed Toll set forth in the Contract, (B) all applicable taxes, (C) all amounts owing under the Contract in respect of Petroleum Delivered but for which all tolls and other charges are not yet paid, and (D) all other amounts for which Shipper is obligated to pay Carrier pursuant to the Tariff.

9.4 Pursuant to Sections 9.3, 10.2 and 12.2, Carrier shall have the right itself or through an agent, to seize and sell at public auction or by such other lawful means available to Carrier in its discretion, any Petroleum delivered to the Carrier by the Shipper and then in the possession of Carrier or its agent, or otherwise traceable and lienable by Carrier. Such sale may occur on any Day not a legal holiday, provided that the sale takes place not less than forty-eight (48) hours after publication of notice of such sale in a daily newspaper of general circulation published in the area of the proposed sale. Such notice shall state the time, place of sale and quantity, type, and location of Petroleum to be sold. Shipper covenants and agrees not to dispose of its Petroleum other than subject to the lien, charge and security interest granted to Carrier hereby. At such sale, Carrier shall have the right to bid and, if the highest bidder, to become the purchaser of the Petroleum. From the proceeds of the sale of the Petroleum, Carrier will pay itself the tolls, charges, damages and other amounts payable to Carrier under the Tariff, including, without limitation, reasonable storage expenses pending sale of such Petroleum, and all costs and expenses incident to the sale, and the balance remaining, if any, shall be held for whomever may be lawfully entitled thereto, without any obligation to pay interest thereon. Any such funds may be commingled in any account or accounts maintained by Carrier from time to time. Carrier is authorized by Shipper to retain possession of Petroleum Tendered by Shipper or to take Delivery of Petroleum at a Delivery Point for the purpose of enforcing its rights under and pursuant to the Tariff.

9.5 If Shipper disputes any amount payable under an invoice, Shipper shall nonetheless pay to Carrier the full amount of such invoice on or before the Payment Due Date. If it is finally determined that Shipper's invoice was incorrect and that an overpayment has been made, Carrier shall reimburse Shipper for such overpayment, together with interest calculated from the date such overpayment was made until the date of reimbursement at the Prime Rate plus two percent (2%).

ARTICLE 10 – DELIVERY AND ACCEPTANCE

- 10.1** Carrier will transport Petroleum with reasonable diligence and dispatch and Shipper shall accept and remove its Petroleum from the facilities of Carrier upon Delivery of the Petroleum at a Delivery Point.
- 10.2** If Shipper fails to remove its Petroleum from the Pipeline System upon Carrier’s Delivery, then Carrier, or its agent, shall have the right to remove and sell such Petroleum pursuant to Section 9.4. Carrier may retain from the proceeds of such sale (i) all costs and expenses incurred by Carrier with respect to the storage, removal and sale of such Petroleum, and (ii) all tolls and other charges due and payable to Carrier under the Tariff. The remainder of such proceeds, if any, shall be held by Carrier for the Shipper and any other Person lawfully entitled to such proceeds and may be commingled in any account or accounts maintained by Carrier from time to time, without any obligation to pay interest thereon.

ARTICLE 11 – LIABILITY OF SHIPPER

- 11.1** If Shipper fails to remove its Petroleum from Carrier’s facilities upon Delivery and a disruption of Carrier’s operations results, Shipper shall be solely responsible and liable for any and all expenses, costs, damages and losses whatsoever incurred or suffered by Carrier in connection with such disruption, including loss of revenue and loss of profit resulting therefrom, unless the non-removal of such Petroleum is due to Carrier’s direct negligence.
- 11.2** Shipper shall indemnify Carrier for any and all damages, losses, expenses and costs incurred or suffered by Carrier and any other Person as a result of such Shipper’s failure to comply with any provision of the Tariff, unless Shipper’s failure to comply is due to Carrier’s direct negligence.
- 11.3** Shipper shall pay or cause to be paid any and all taxes, duties, charges, levies and other assessments made or imposed by any governmental or regulatory authority having jurisdiction with respect to the Petroleum to be transported by Carrier and shall indemnify and save harmless Carrier from any such taxes, duties, charges, levies and assessments so made or imposed.

ARTICLE 12 – DEFAULT, SUSPENSION AND TERMINATION

- 12.1** Subject to Article 15, if Carrier or Shipper (a “**Defaulting Party**”) shall fail to perform any of the covenants or obligations imposed upon it under the Tariff, other than Shipper’s failure to pay an invoice on or before the Payment Due Date (which circumstance is addressed in Article 9), then in addition, to any other remedies the non-Defaulting Party may have under the Tariff, at law or in equity, the non-Defaulting Party may terminate the Contract in the following manner: The non-Defaulting Party shall deliver a written notice (a “**Default Notice**”) to the Defaulting Party, stating the relevant default, and declaring it to be the intention of the non-Defaulting Party giving the Default Notice to terminate such Contract. The Defaulting Party shall have (i) in the case of a default of a monetary nature (which includes, without limitation, a default pursuant to Article 20), ten (10) Days after receipt of the Default Notice, or (ii) in the case of a default of a non-monetary nature, thirty (30) Days after receipt of the Default Notice (in either case, the “**Default Period**”) in which to remedy or remove the cause or causes of the default stated in the Default Notice. If such default is remedied within the Default Period, or if the Defaulting Party fully indemnifies by payment to the Non-Defaulting Party or otherwise secures the non-Defaulting Party (in form and substance satisfactory to the non-Defaulting Party) for any and all consequences of such default, then the Default Notice shall be withdrawn and the Contract shall continue in full force and effect provided that such indemnity or security remains in place.

- 12.2** If the Defaulting Party does not remedy the default or does not indemnify by payment to the Non-Defaulting Party or otherwise secure the non-Defaulting Party for any and all consequences of such default within the Default Period referred to in Section 12.1, then the non-Defaulting Party may terminate the Contract. Any termination of the Contract pursuant to the provisions of this Section 12.2 shall be without prejudice to the right of Carrier to collect any amounts then due to it for transportation service provided up to and including the date of the termination and shall be without prejudice to the right of Term Shipper to receive any Petroleum which has not been received but for which the tolls and charges for transportation service have been paid prior to the date of termination, and without waiver of any other remedy to which the non-Defaulting Party may be entitled for breaches of the Contract. If Carrier terminates a Contract pursuant to this Section 12.2:
- (i) Term Shipper shall remain liable for and shall pay to Carrier within five (5) Banking Days of such termination, pursuant to Carrier's invoice, the aggregate of: (a) the fixed toll payable under the Contract for the unexpired term of such Contract, such amount equal to the Monthly Volume multiplied by the number of unexpired Months in the Contract, which product in turn shall be multiplied by the fixed toll set forth in the Contract, (b) all applicable taxes, (c) all amounts owing under the Contract in respect of Petroleum Delivered but for which tolls are not yet paid, and (d) all other amounts for which Shipper is obligated to pay Carrier pursuant to the Tariff; and
 - (ii) Carrier, or its agent, shall have the right to remove and sell such Petroleum pursuant to Section 9.4. Carrier may retain from the proceeds of such sale (a) all costs and expenses incurred by Carrier with respect to the storage, removal and sale of such Petroleum, and (b) all tolls and other charges due and payable to Carrier under the Tariff. The remainder of such proceeds, if any, shall be held by Carrier for the Shipper and any other Person lawfully entitled to such proceeds and may be commingled in any account or accounts maintained by Carrier from time to time, without any obligation to pay interest thereon.
- 12.3** If a Shipper is the Defaulting Party, Carrier may, in addition to any other remedy it may have under the Tariff (including, without limitation, under Section 20.1), at law or in equity, upon three (3) Banking Days written notice to Shipper, suspend further receipt and Delivery of Petroleum from and to Shipper until such Shipper remedies the default or otherwise indemnifies by payment to Carrier or otherwise secures Carrier for any and all consequences of such default, provided however, that any such suspension shall not relieve Shipper from any obligation to pay any further tolls, charges or other amounts payable to Carrier under the Tariff. If, at any time during such suspension, Shipper remedies the default or otherwise indemnifies or secures Carrier for any and all consequences of such default as contemplated in this Section, Carrier shall, within two (2) Banking Days of Shipper delivering written notice to Carrier confirming that the default has been remedied, or Carrier receiving such indemnity or other form of security satisfactory to Carrier, recommence receipt and Delivery of Shipper's Petroleum.
- 12.4** Carrier may, in its sole discretion and without limiting any other remedy that may be available to it under the Tariff, at law or in equity, reject a Nomination from and deny service to any Non-Term Shipper if such Non-Term Shipper has failed to pay within five (5) Banking Days of the Payment Due Date, any invoice issued by Carrier to such Non-Term Shipper pursuant to the Tariff.
- 12.5** No waiver by Carrier or Shipper of any one or more defaults by the other Party in the performance of any provisions of the Tariff shall operate or be construed as a waiver of any continuing or future default or defaults, whether of a like or different character.

ARTICLE 13 – INTERRUPTION AND CURTAILMENT

- 13.1** Carrier may interrupt, curtail or reduce transportation service to Shippers for such periods of time as it may reasonably require for the purpose of effecting or allowing any repairs, maintenance, replacement, upgrading or other work related to the Pipeline System or Carrier’s other facilities, in circumstances which do not constitute Force Majeure. If such interruption is due to a planned outage, Carrier shall give Shippers at least forty-eight (48) hours notice of such interruption and curtailment. If such interruption is unforeseen, Carrier shall give Shippers notice of such interruption and curtailment as soon as reasonably possible. Carrier shall use reasonable commercial efforts to minimize the duration of any planned interruption and the impact of such interruption on the operation of the Pipeline System.
- 13.2** During periods of interruption pursuant to Section 13.1, Carrier may curtail transportation service as follows: (i) firstly, service in respect of Uncommitted Capacity on a pro rata basis until such service has been reduced to zero; and (ii) secondly, service to Term Shippers on a pro rata basis.
- 13.3** Notwithstanding any interruption and curtailment pursuant to this Article 13, no such interruption and curtailment shall suspend or relieve Shippers of the obligation to pay the tolls, charges and other amounts payable to Carrier under the Tariff.

ARTICLE 14 – LIABILITY OF CARRIER

- 14.1** Notwithstanding anything in the Tariff to the contrary, Carrier shall not be liable to Shipper for any losses, damages, claims, costs, expenses or delay incurred or suffered by Shipper unless directly caused by Carrier’s direct negligence and in any event Carrier shall have no liability whatsoever to Shipper for Special Damages.
- 14.2** If damage to or loss of Petroleum occurs while Carrier is in possession of such Petroleum, then Carrier may apportion the cost of such damage or loss on a pro rata basis among all Shippers. Each Shipper’s share of such cost shall be determined by Carrier based on the proportion of the volume of the Shipper’s Petroleum in the possession of Carrier on the date of such loss to the total volume of all Shippers’ Petroleum in the possession of Carrier on the date of such loss.
- 14.3** All Shippers shall be responsible for their proportionate share of physical losses of Petroleum resulting from normal Pipeline System operations, including line losses and shrinkage.

ARTICLE 15 – FORCE MAJEURE

- 15.1** If either Carrier or Shipper fails to perform, in whole or in part, its obligations under the Tariff due to an event of Force Majeure, then such failure shall be deemed not to be a breach of such obligations.
- 15.2** The term “**Force Majeure**”, as used herein and for all purposes relating hereto, shall mean any act of God, war, civil insurrection or disobedience, acts of the public enemy, sabotage, acts of terrorism, strikes, lockouts or other industrial disturbances, blockades, riots, epidemics, landslides, lightning, earthquakes, explosions, fires, floods, storms, civil disturbances, the act, regulation, order, direction or requisition of any governmental or other legal authority having jurisdiction, breakdown or failures of pipe, plant, machinery or equipment, inability to obtain or the curtailment of electric power, water or fuel, or other cause whether of the kind enumerated or otherwise which is beyond the control of the applicable Person and which by the exercise of due diligence such Person is unable to prevent or overcome.

- 15.3** Notwithstanding Sections 15.1 and 15.2, the following shall not, under any circumstance, constitute an event of Force Majeure:
- (i) insufficiency of Shipper's Petroleum supplies;
 - (ii) lack of funds;
 - (iii) availability of more attractive markets for Petroleum;
 - (iv) absence of a market for Petroleum; or
 - (v) availability of alternative Petroleum transportation systems.
- 15.4** A Person that fails to perform any obligation under the Tariff where such failure is caused by an event of Force Majeure shall promptly remedy the cause of the Force Majeure insofar as it is reasonably able to do so, provided that the terms of the settlement of any strike, lockout or other industrial disturbance shall be wholly in the discretion of the Person claiming suspension of its obligations hereunder by reason thereof.
- 15.5** Notwithstanding the above provisions, no event of Force Majeure shall:
- (i) relieve any Person from any obligation under the Tariff unless such Person gives notice with reasonable promptness of such event to the other Person; or
 - (ii) relieve any Person from any obligation under the Tariff after the expiration of a reasonable period of time within which, by the use of its due diligence, such Person could have remedied or overcome the consequences of such event of Force Majeure.
- 15.6** Notwithstanding anything in this Article 15 to the contrary, no event of Force Majeure shall relieve any Shipper from its obligations under the Tariff to make payments pursuant to Article 9 or to provide Financial Assurances pursuant to Article 20 to Carrier under the Tariff during the continuance of such Force Majeure event.
- 15.7** In respect of Term Shippers, where the event of Force Majeure is declared by Carrier as a result of such event occurring on the Pipeline System, then the term then in effect for the relevant Contract will be extended by the aggregate amount of time the Carrier has declared each such Force Majeure event, for the period required to transport, at the Contract Volume, a volume equivalent to the aggregate volumes forming part of the Monthly Volumes as were excused by such relevant events of Force Majeure.

ARTICLE 16– ADVERSE CLAIMS AGAINST PETROLEUM

- 16.1** Shipper shall not Tender Petroleum which is in any way subject to litigation, the ownership of which may be in dispute, or which is subject to a security interest, lien or charge of any kind (other than the lien of Carrier pursuant to the Tariff) (each an “**Adverse Encumbrance**”) unless Shipper provides written notification to Carrier of such Adverse Encumbrance not less than twenty (20) Days before such Tender is made to Carrier. Shipper shall provide written notice to Carrier if at any time while its Petroleum is in the possession of Carrier, such Petroleum becomes subject to an Adverse Encumbrance. Carrier shall not be obligated to accept receipt from Shipper of any Petroleum that is subject to an Adverse Encumbrance. Upon demand by Carrier, Shipper shall provide a bond or other form of indemnity satisfactory to Carrier that fully protects and indemnifies Carrier against any liability, loss, cost or expense that may arise as a result of such Adverse Encumbrance and secures the payment to Carrier of all tolls and other charges which would become payable under the Tariff if Carrier were to transport such Petroleum.

ARTICLE 17 – CLAIMS, SUITS AND TIME FOR FILING

- 17.1** As a condition precedent to the payment by Carrier of any claims for loss, damage or delay asserted by Shipper in connection with the transportation of Petroleum Tendered for shipment under the Tariff, Shipper must submit such claim in writing to Carrier within ninety (90) Days after Delivery of the Petroleum involved in such claim, or, in the case of failure to make Delivery, then within ninety (90) Days after a reasonable time for Delivery has elapsed. Any suits arising out of such claims must be instituted against Carrier within six (6) Months from the date when notice in writing is given by Carrier to Shipper that Carrier has disallowed the claim or any part or parts thereof as specified in the notice. Claims advanced beyond such six (6) Month period shall be null and void as between Shipper and Carrier. In Tendering Petroleum to be transported under the Tariff, Shipper agrees to be bound by the provisions of this clause and waive any rights which it might otherwise have at common law, in equity or otherwise, to make a claim after the expiration of said period of ninety (90) Days or to bring an action after the expiration of the said period of six (6) Months. Nothing contained in this Section 17.1 shall be construed as constituting a waiver or release of any rights or defences which Carrier may have at law, in equity or pursuant to the Tariff, in respect of any claim or demand asserted by Shipper.
- 17.2** Except as expressly provided in this Tariff, neither Party nor its respective Affiliates shall have any liability or responsibility to the other Party or the other Party's Affiliates for any Special Damages incurred by such Person that arise out of or otherwise relate to this Tariff or the subject matter of this Tariff, regardless of whether such claim arises under or results from contract, tort or strict liability; provided that, subject to Sections 6.2 and 14.1, such limitation is not intended, nor shall it affect or limit liability for, Special Damages imposed in favour of Persons that are not a Party or an Affiliate of a Party.

ARTICLE 18 – REPRESENTATIONS, WARRANTIES AND OTHER COVENANTS

- 18.1** Shipper represents and warrants that: (i) it has in place for all Tendered Petroleum all required approvals, permits and authorizations for the removal, transportation and Delivery of Petroleum hereunder; (ii) that it owns, controls or otherwise has the right to Tender and deliver or have Tendered and delivered for its account, the Petroleum that is Tendered to Carrier for the purpose of transportation pursuant to the Tariff, (iii) that the performance by Shipper of its obligations under the Tariff (and Contract, if a Term Shipper) has been duly authorized by all necessary corporate action and does not require any approval or consent of any other Person or entity; (iv) Petroleum Tendered to Carrier will not be subject to any Adverse Encumbrance; and (v) that, in respect of Term Shippers, the Contract is in full force and effect, has been duly executed and delivered on behalf of Term Shipper and constitutes the legal, valid and binding obligation of Term Shipper, enforceable against Term Shipper in accordance with its terms.

ARTICLE 19– GOVERNING LAW

- 19.1** The Tariff shall be construed and applied in accordance with and be subject to the laws of the Province of Alberta, and the laws of Canada applicable therein, and shall be subject to the rules, regulations, decisions and orders of any regulatory or legislative authority having jurisdiction over the matters contained herein. No Person will institute any action, suit or other proceeding with respect to Contracts, the Petroleum Toll Schedule or the Rules and Regulations or any matter relating to Carrier other than in the Alberta Court of Queen's Bench in the judicial district of Calgary, or, if that court for any reason lacks subject matter jurisdiction, the appropriate court for the Province of Alberta or Canada, as applicable. In that regard, each Person subject to the Tariff

hereby irrevocably attorns to the jurisdiction of such courts in Alberta or Canada in the event of any such action, suit or other proceeding by the other Party. **ALL PERSONS SUBJECT TO THE TARIFF SPECIFICALLY AND KNOWINGLY WAIVE ANY TRIAL BY JURY AND ANY SUCH CONTROVERSY SHALL BE LITIGATED BEFORE A TRIAL JUDGE.**

ARTICLE 20– FINANCIAL INFORMATION AND ASSURANCES

20.1 Shipper shall provide to Carrier, at any time:

- (i) upon Carrier’s request, information (“**Financial Information**”) that will allow the Carrier to evaluate (or re-evaluate) and establish Shipper’s capacity to perform any financial obligations that could arise from the transportation of Shipper’s Petroleum on the Pipeline System; and
- (ii) upon Carrier’s reasonable request, financial security for the payment of the tolls and other charges to be paid by Shipper to Carrier in respect of transportation or other service (“**Financial Assurances**”).

If Shipper fails to provide Financial Information or Financial Assurances to Carrier within four (4) Banking Days of Shipper’s receipt of Carrier’s written request for such Financial Information or Financial Assurances, Shipper shall thereupon be deemed to be in default under the Tariff and Carrier may, in addition to any other remedy it may have under the Tariff, at law or in equity, upon three (3) Banking Days written notice to Shipper, suspend further receipt and Delivery of Petroleum from and to Shipper until such Financial Information or Financial Assurances are provided by Shipper to Carrier; provided however, that any such suspension shall not relieve Shipper from any obligation to pay any further rates, tolls, charges or other amounts payable (including taxes) to Carrier under the Tariff. If, at any time during such suspension, Shipper provides the requested Financial Information or Financial Assurances to Carrier, Carrier shall, within two (2) Banking Days of receipt of such Financial Information or Financial Assurances, recommence receipt and Delivery of Shipper’s Petroleum.

20.2 For the purposes of Section 20.1(ii), Carrier may make a reasonable request for Financial Assurances on the following grounds:

- (i) Carrier has reasonable grounds for insecurity regarding the performance of any obligation under the Contract or the Tariff;
- (ii) the rating given to Shipper’s senior unsecured long term debt, excluding any third party enhancement, is lower than any of the following: (a) “BBB-” from Standard & Poor’s, a division of The McGraw Hill Companies, Inc.; (b) “Baa3” from Moody’s Investors Service, Inc.; or (c) “BBB (low)” from Dominion Bond Rating Service Limited, or any of such rating agencies’ respective successors in interest; and
- (iii) any Financial Assurances previously provided by Shipper no longer provide adequate support for the performance of Shipper’s obligations that could arise under the Tariff.

20.3 The Financial Assurances that Carrier may request from Shipper pursuant to the Tariff shall be limited to the following:

- (i) for Term Shippers, an irrevocable standby letter of credit or other form of financial assurance (which assurance could include without limitation, a financial guarantee), in an

amount no greater than twelve (12) Months of tolls and other charges based on the Monthly Volume, plus all applicable taxes; and

- (ii) for Non-Term Shippers, at the sole discretion of Carrier, either prepayment of the tolls and other charges and taxes applicable to Shipper's Allocated Volume or an irrevocable standby letter of credit or such other financial assurance in an amount no greater than sixty (60) Days of tolls and other charges based on Shipper's Allocated Volume, plus all applicable taxes, which Financial Assurances shall remain in effect for not less than ninety (90) Days beyond the termination of the service or of the period for which volumes are Tendered, as the case may be.

20.4 The following aspects of any Financial Assurances must be acceptable to Carrier:

- (i) the terms of any letter of credit;
- (ii) the adequacy (including terms) of any proposed financial assurance; and
- (iii) the creditworthiness of the issuer of any letter of credit or other financial assurance.